

## **STATE OF CALIFORNIA**

### **NEW MOTOR VEHICLE BOARD**

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**Business, Transportation and Housing Agency**  
SUNNE WRIGHT McPEAK, Secretary

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DAVID C. LIZARRAGA  
HAIG PAPAIAN  
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ANDY ROBLES  
ALAN J. SKOBIN  
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## ***PREAMBLE***

This publication provides general information only as to the most pertinent Vehicle Code sections, as they relate to practice before the New Motor Vehicle Board (“Board”). There are many other important Vehicle Code sections and Board regulations not covered in this publication. The materials contained herein are intended to be informative and not advisory, limited in scope, and are not intended to be a substitute for careful reading of the specific statutes and regulations that may apply to your particular situation. Practitioners as well as the general public are invited to comment on the forms and contents of procedures. Please note the Board’s address is different from the address of the Department of Motor Vehicles (“Department”). The Board only has one office in Sacramento. All correspondence, protests, petitions, and appeals must be sent to:

New Motor Vehicle Board  
ATTN: Legal Department  
1507 21<sup>st</sup> Street, Suite 330  
Sacramento, California 95814

The telephone number of the Board is (916) 445-2080, the fax number (916) 323-1632, and the web site address is <http://www.nmvb.ca.gov>. Please feel free to contact the Board’s staff for further information.

## PREFACE

The purpose of this publication is to familiarize the reader with the organization and jurisdiction of the Board, including the Board's operations and procedures. All statutory references are to pertinent sections of the Vehicle Code unless specified. The full text of those sections of the Vehicle Code is set forth in Appendix I. All references to regulations will be to the California Code of Regulations, Title 13, Motor Vehicles, Subchapter 2, New Motor Vehicle Board, (Appendix II). The referenced sections will be noted in the following manner, for example, 13 CCR 550, et seq. Citations to relevant court decisions are interspersed throughout.

The Board also publishes the Informational Guide for Manufacturers and Distributors to assist manufacturers and distributors in clarifying California's vehicle franchise laws. It is designed for personnel in manufacturer or distributor Market Representation Departments, Dealer Development Departments, or Legal Departments. The Informational Guide for Manufacturers and Distributors is available free from the Board's offices at the above address, or can be accessed on the Board's website, <http://www.nmvb.ca.gov>.

## **INTRODUCTION**

### **Purpose**

The Board is a program within the Department. The Board was originally created in 1967 as the New Car Dealers Policy and Appeals Board. At that time, the Board's only function was hearing appeals from final decisions of the Director of the Department adverse to the occupational license of a new motor vehicle dealer, manufacturer, distributor, or representative. In 1973, the Legislature passed the California Automobile Franchise Act (Stats. 1973, ch. 966, § 1, p. 2), which gave the Board its present name and created a broad statutory framework and a forum for regulating and settling disputes in the new vehicle industry. The constitutionality of this regulatory scheme has survived a due process challenge in the United States Supreme Court (*NMVB v. Orrin W. Fox Co.* (1978) 439 U.S. 96, 58 L.Ed.2d 361, 99 S.Ct. 403).

### **Organization**

The organization of the Board is prescribed in Vehicle Code sections 3000 to 3016. The Board is comprised of nine members. The chart below identifies the composition of the Board.

<b><i>Who</i></b>	<b><i>Qualifications</i></b>	<b><i>Appointment</i></b>
Four licensed new motor vehicle dealers. (Dealers that deal exclusively in motorcycles or recreational vehicles are excluded from membership on the Board.)	Must have been licensed as a new motor vehicle dealer for not less than five years.	All by the Governor.
Five members from the general public.	One must be an attorney who has been a member of the California Bar for at least ten years.	Three by the Governor. One by the Senate Rules Committee. One by the Speaker of the Assembly.

### **Meetings**

The Board meets at least twice during each calendar year, with supplemental meetings held as necessary. Board meetings are open to the public with the exception of executive sessions, which are held to deliberate on pending matters before the Board. As public meetings, conducted by a state entity, the Bageley-Keene Open Meeting Act, (Gov. Code §§ 11120 through 11132), covers all requirements for public notice, agendas, public testimony and conduct of Board meetings. To the extent practicable, the Board conducts business at meetings using a modern interpretation of procedures set forth in Robert's Rules of Order.

## ***INTRODUCTION, continued***

### **Jurisdiction**

The Board's statutory jurisdiction under Vehicle Code section 3050(c) extends over any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative. In the past, the courts construed this jurisdiction as primary and exclusive, meaning an aggrieved licensee must bring any dispute arising out of the franchise relationship before the Board prior to seeking judicial relief (*Yamaha Motor Company v. Superior Court* (1986) 185 Cal. App. 3d 1232, 230 Cal. Rptr. 382; *Yamaha Motor Company v. Superior Court* (1987) 195 Cal. App. 3d 652, 240 Cal. Rptr. 806; *Ray Fladeboe Lincoln-Mercury, Inc. v. New Motor Vehicle Board* (1992) 10 Cal. App. 4<sup>th</sup> 51, 12 Cal. Rptr. 2d 598; *Mathew Zaheri Corp. v. Mitsubishi Motor Sales of America, Inc.* (1993) 17 Cal. App. 4<sup>th</sup> 288, 21 Cal. Rptr. 2d 325). However, recent court decisions have held otherwise (*Miller v. Superior Court* (1996) 50 Cal. App. 4<sup>th</sup> 1665, 58 Cal. Rptr. 2d 584); *Hardin Oldsmobile v. New Motor Vehicle Board* (1997) 52 Cal. App. 4<sup>th</sup> 585, 60 Cal. Rptr. 2d 583; *Tovas v. American Honda Motor Company, Inc.* (1997) 57 Cal. App. 4<sup>th</sup> 506, 67 Cal. Rptr. 2d 145; *Kemp v. Nissan Motor Corporation in U.S.A.* (1997) 57 Cal. App. 4<sup>th</sup> 1527, 67 Cal. Rptr. 2d 794.) As a consequence of these judicial decisions, subdivision (e) of Vehicle Code section 3050 was added by the Legislature in 1997 and became effective in 1998. It provides that the courts have jurisdiction over all common law and statutory claims originally cognizable in the courts. For those claims, a party may initiate an action directly in any court of competent jurisdiction.

Recently, the Board's petition jurisdiction under Vehicle Code section 3050, subdivision (c) was further narrowed by the Third District Court of Appeal in *Mazda Motor of America, Inc., v. California New Motor Vehicle Board*; *David J. Phillips Buick-Pontiac, Inc., Real Party in Interest* (2003) 110 Cal. App. 4<sup>th</sup> 1451; 2 Cal. Rptr. 3d 866. The court held that the Board's jurisdiction for licensee versus licensee petitions is limited to those in which the petitioner seeks relief under Vehicle Code section 3050, subdivision (c)(1) or (3). Subdivision (c)(1) allows the Board to direct the Department to conduct an investigation of matters that the Board deems reasonable. Subdivision (c)(3) permits the Board to order the Department to "exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation" of the occupational license of a manufacturer or distributor. The Board's jurisdiction under Vehicle Code section 3050, subdivision (c)(2) which provides that the Board may "undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint (i.e., hold a hearing) existing between any member of the public and any new motor vehicle dealer, manufacturer, ... distributor branch..." is now limited to petitions brought by members of the public, and does not include licensees as petitioners.

Another recent significant change in the Board's jurisdiction occurred with the enactment of SB 248 (Stats. 2003, ch. 703). This legislation, which becomes effective January 1, 2004, adds and amends Vehicle Code sections to bring new recreational vehicles ("RVs") as defined in Health and Safety Code section 18010 (a) under the jurisdiction of the Board for purposes of dispute resolution and fee collection. This edition of the Guide will integrate current Board processes and procedures to the extent they can be used to resolve disputes in the RV segment of the new motor vehicle industry, and set forth unique procedures that will pertain to RV issues exclusively.

## ***INTRODUCTION, continued***

### **Powers and Duties in General**

The powers and duties of the Board are set out in Vehicle Code sections 3050 and 3051. New vehicle dealers, manufacturers, and distributors under the jurisdiction of the Board are charged fees to fund the Board's activities (Veh. Code §§ 3016 and 3077; 13 CCR 553). In addition to delegating rulemaking authority to the Board, Vehicle Code section 3050 empowers the Board to resolve disputes arising in the form of protests, petitions, or appeals.

As a quasi-judicial body, the Board is empowered by Vehicle Code section 3050.1(a) to:

- administer oaths,
- take depositions,
- certify to official acts, and
- issue subpoenas to compel attendance of witnesses or the production of documents.

Obedience to subpoenas and the compliance with discovery procedures can be enforced by application to the Superior Courts (Veh. Code § 3050.2 (a)). In any protest or petition filed before the Board, the Board, its Executive Director, or an administrative law judge may order a mandatory settlement conference (Veh. Code § 3050.4). For any particular proceeding, the settlement conference judge is precluded from hearing the proceeding on the merits or other motions in the case without stipulation by the parties (13 CCR 551.11). The failure of a party to appear, to be prepared, or to have the authority to settle the matter at such a conference may result in the Board taking action adverse to that party (Veh. Code § 3050.4).

## ***INTRODUCTION, continued***

### **Disputes Between the Dealer and the Franchisor**

The Vehicle Code gives the Board jurisdiction to resolve disputes involving the following:

<b><i>Type of Case</i></b>	<b><i>Vehicle Code Authority</i></b>	<b><i>Board Guide Pages</i></b>
Attempts by the franchisor to terminate, modify, refuse to continue (renew) the franchise.	3060, 3070	9-15
Attempts by the franchisor to establish a new dealership at, or relocate an existing dealership to, a location that is within 10 miles of another dealership of the same line-make.	3062(a)(1), 3072(a)(1)	16-21
Attempts by the franchisor to establish a satellite warranty facility at, or relocate an existing satellite warranty facility to, a location that is within 2 miles of any dealership of the same line-make. (Note: there are no comparable provisions for RV dealers.)	3062(a)(2)	22-24
Disputes relating to the dealers' delivery and preparation obligations, and compensation for such services.	3064, 3074	25-26
Disputes relating to reimbursement for warranty work performed by the dealer.	3065, 3075	27-28
Disputes relating to reimbursement for franchisor incentive programs.	3065.1, 3076	29-30
All other disputes concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, or distributor submitted by any member of the public <sup>1</sup> or disputes between a franchisor and a franchisee seeking an investigation or a licensing action by the Department.	3050(c)	35-39

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<sup>1</sup> Members of the public have the option to seek informal mediation of their disputes (13 CCR 551.14 et seq.) as well as administrative hearings on the merits pursuant to the Board's petition process. See page 38 for details.



## ***INTRODUCTION, continued***

**NOTE:** Vehicle Code section 3050(d) prohibits a dealer member from participating, hearing, commenting, advising other members upon, or deciding any matter that involves a protest filed “pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise.” Vehicle Code section 3066(d) states: “(d) (a) member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to this article unless all parties to the protest stipulate otherwise.” These constraints ensure procedures that preclude any suggestion of bias or partiality of Board decisions. The dealer members may participate in those matters not involving a dispute between a franchisee and franchisor such as a petition filed by a member of the public or an appeal from a Department decision.

It is important to further note that dealer members may participate in protests between RV franchisees and franchisors as the authority to resolve such disputes is in Article 4, sections 3070 through 3079, which contain no similar limits on dealer member participation.

## **Enforcement of Board Orders**

There are provisions for sanctions, injunctions and penalties for violating orders of the Board or the requirements of those sections of the Vehicle Code within the Board’s authority. Vehicle Code section 11726 provides for enforcement of Board orders by permitting any licensee to recover damages, attorney fees, and injunctive relief in any court of competent jurisdiction for a willful failure to comply with a Board order.

## ***PROTESTS***

### **Statutory Authority**

Vehicle Code section 3050(d) provides for the Board to hear and decide any protest presented by a franchisee against a franchisor.

### **Statutory Bases for Protest**

A protest can arise as a result of disputes contemplated by five statutory provisions:

<b><i>Vehicle Code Section</i></b>	<b><i>Provision</i></b>
3060, 3070	The franchisor attempts to terminate, modify, or refuses to continue the franchise.
3062(a)(1), 3072(a)(1)	The franchisor attempts to establish an additional dealer or relocate an existing dealer within the relevant market area (any area within a radius of 10 miles from the site of a potential new dealership) where the same line-make is already represented without complying with the statutory scheme.
3062(a)(2)	The franchisor attempts to establish an additional satellite warranty facility or relocate an existing satellite warranty within 2 miles of any dealership of the same line-make without complying with the statutory scheme. (Note: there are no comparable provisions for RV dealers.)
3064, 3074	Disputes relating to the dealer's delivery and preparation obligations and compensation for such services.
3065, 3075	Disputes relating to reimbursement for warranty work performed by the dealer.
3065.1, 3076	Disputes relating to reimbursement for franchisor incentive programs.

### **Mailing of Protest**

Most protests have specific statutorily imposed time limits for filing. A protest is deemed filed upon its receipt by the Board, or upon mailing of the protest but only if it is sent by either certified or registered mail. Accordingly, it is suggested that all protests be either personally filed or mailed by certified or registered mail.

The respondent shall file a written notice of appearance within 15 days of receipt of the protest (13 CCR 585.1). Failure to timely file a notice of appearance shall result in the proceedings being suspended until such time as a notice of appearance is filed.

## ***PROTESTS, continued***

### **Protest Filing Fee**

A filing fee of \$200, which should be in the form of a check or money order payable to the New Motor Vehicle Board, must accompany the protest.

### **Interested Individuals**

Per Vehicle Code section 3066 any interested individual may apply to the Board for permission to appear at the hearing on any protest for the purpose of submitting direct evidence concerning the issues raised in the protest.

### **Challenge to Presiding Officer**

A party may request disqualification of a Board member or an administrative law judge for cause prior to the taking of evidence by filing an affidavit stating the grounds for the request (13 CCR 551.1). Further, 13 CCR 551.12 entitles a party in a Board proceeding to one disqualification without cause (peremptory challenge) of an assigned administrative law judge by making the challenge no later than 5 or 10 days prior to the hearing depending on factors set forth in 13 CCR 551.12. Parties are not be entitled to a peremptory challenge in any proceeding relating to applications for temporary relief or interim orders. Except for the convenience of the Board or for good cause shown, no hearing shall be continued by the filing of a peremptory challenge.

### **Motion for Intervention**

13 CCR 551.13 permits any person, including a Board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative to file a motion to intervene in a pending protest.

### **Amicus Curiae Briefs**

The Board, its Executive Director, or an administrative law judge may, in his or her discretion, allow the filing of amicus curiae briefs.

***PROTESTS, continued***

**Table of Contents for Protest Section**

The chart below identifies the section and page numbers for procedural requirements particular to each type of protest, but should be relied upon only as a guide.

<b><i>Protest Section of Guide</i></b>	<b><i>Page</i></b>
Termination of the Franchise	9-12
Modification of the Franchise	13-15
Additional or Relocated Franchise	16-20
Additional or Relocated Satellite Warranty Facility	21-23
Compensation for Delivery and Preparation	24-25
Compensation for Warranty Reimbursement	26-27
Franchisor Incentive Program	28-29
Hearing Procedures	30-33

## ***TERMINATION OF FRANCHISE***

### **Statutory Authority for Protest**

Vehicle Code sections 3060 and 3070 give the dealer the right to protest an attempt by the manufacturer or distributor to terminate an existing franchise agreement.

### **Franchisor's Notice of Termination**

Vehicle Code sections 3060 and 3070 provide that no franchisor (manufacturer or distributor) shall terminate or refuse to continue a franchise (sales and service agreement) unless written notice of the franchisor's intent to terminate has been received by both the franchisee (dealer) and the Board. The notice must set forth the specific grounds for termination and must contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, one of the following statements:

(When a 60-day notice of termination is given.)

**“NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.”**

(When a 15-day notice of termination is given.)

**“NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.”**

## ***TERMINATION OF FRANCHISE, continued***

### **Time Frame for Filing Protest**

It is essential not to confuse the time within which to file a protest with the Board with the time at which a termination becomes effective. The time at which the termination will become effective is also governed by the reasons for termination. The chart below identifies reasons for termination, corresponding protest filing periods, and effective dates of termination.

<b><i>Reason for Termination</i></b>	<b><i>Filing Period</i></b>	<b><i>Effective Date of Termination</i></b>
Transfer of any ownership or interest in the dealership without the consent of the franchisor.	10 days from dealer's receipt of notice or 10 days after the end of any appeal procedure provided by the manufacturer or distributor.	15 days after dealer's receipt of notice.
Misrepresentation by the dealer in applying for the franchise.	As above.	As above.
Insolvency of the dealer, or the filing of any petition by or against the dealership under any bankruptcy or receivership law.	As above.	As above.
Any unfair business practice after written warning thereof.	As above.	As above.
Failure of the dealer to conduct its customary sales and service operation during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the dealer is in fact going out of business, except for circumstances beyond the direct control of the dealer or by order of the Department.	As above.	As above.
Any other reason.	30 days from dealer's receipt of notice or 30 days after the end of any appeal procedure provided by the manufacturer or distributor.	60 days after dealer's receipt of notice.

The protest shall be considered received on the date of receipt by the Executive Director of the Board or on the date of certified or registered mailing. A document which purports to be a protest will not be "filed" until the Executive Director has reviewed it for compliance with the Board's enabling statutes and regulations. If the Executive Director deems the document complies, it shall be filed as a protest (13 CCR 598).

## ***TERMINATION OF FRANCHISE, continued***

### **Time Frame for Filing Protest, continued**

Failure of a dealer to file a timely protest with the Board will result in a loss of the right to a hearing before the Board. ***This could result in automatic termination of the franchise as of the time indicated in the notice of termination.***

### **Required Elements of Protest**

A protest to the proposed termination or non-renewal of a franchise must contain all of the following (see Appendix for sample Form A and content requirements):

<b><i>Content Requirements</i></b>	<b><i>Regulation Authority</i></b>
Must be in writing and be signed by a franchisee or its attorney.	13 CCR 583
Must be responsive to the specific grounds of the termination set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. [All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.]	13 CCR 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR 585(f)
Franchisee shall set forth a request for a pre-hearing conference if one is desired.	13 CCR 585(g)
Franchisee may submit as exhibits to the protest any physical evidence relevant to the matter with an adequate description in the protest.	13 CCR 585(c)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check or money order payable to the New Motor Vehicle Board.	13 CCR 553.40
Franchisee shall serve a copy of the protest upon the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR 584

### **Good Cause**

If a timely protest is filed, the manufacturer or distributor cannot terminate the franchise until a hearing has been held and the Board acts on the proposed decision. At a hearing, the manufacturer or distributor will have the burden of proving "good cause" for termination. In making a determination of good cause under Vehicle Code sections 3061 or 3071, the Board shall take into consideration the existing circumstances, including, but not limited to all of the following:

***TERMINATION OF FRANCHISE, continued***

<b><i>Circumstances</i></b>	<b><i>Vehicle Code Section</i></b>
Amount of business transacted by the franchisee, as compared to the business available to the franchisee.	3061(a), 3071(a)
Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.	3061(b), 3071(b)
Permanency of the investment.	3061(c), 3071(c)
Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.	3061(d), 3071(d)
Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public. (Note: In the case of RVs, not all franchise agreements require service facilities, equipment, vehicle parts, and qualified service personnel.)	3061(e), 3071(e)
Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee. (Note: In the case of RVs, not all franchise agreements require franchisees to have warranty obligations.)	3061(f), 3071(f)
Extent of the franchisee's failure to comply with the terms of the franchise.	3061(g), 3071(g)

If the franchisor, having the burden, cannot establish good cause for terminating the franchise, the termination will not be permitted.



## ***MODIFICATION OF FRANCHISE***

### **Statutory Authority for Protest**

Vehicle Code sections 3060(b) and 3070(b) give the dealer the right to protest an attempt by the manufacturer or distributor to modify an existing franchise such that the modification substantially affects the dealer's sales or service obligations or investment.

### **Franchisor's Notice of Modification**

Vehicle Code sections 3060 and 3070 provide that no franchisor shall modify or replace an existing franchise with a succeeding franchise if the modification or replacement would substantially affect the existing franchisee's sales or service obligations or investment, unless written notice of modification or replacement is given to each affected franchisee and the Board at least 60 days prior to the modification or replacement.

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, the following statement:

**“NOTICE TO DEALER: Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest rights will be waived.”**

### **Time Frame for Filing Protest**

Filing a timely protest will prevent the modification from becoming effective until a hearing is held by the Board and the Board acts on the proposed decision. It is essential not to confuse the time within which to file a protest with the Board with the time at which a modification becomes effective. The chart below identifies the protest filing periods and effective dates of modification:

<b><i>Reason for Modification</i></b>	<b><i>Filing Period</i></b>	<b><i>Effective Date of Modification</i></b>
As stated by franchisor.	30 days from dealer's receipt of notice or 30 days after the end of any appeal procedure provided by the manufacturer or distributor.	60 days after dealer's receipt of notice

## ***MODIFICATION OF FRANCHISE, continued***

### **Time Frame for Filing Protest, continued**

The protest shall be considered received on the date of receipt by the Executive Director of the Board or on the date of certified or registered mailing. A document which purports to be a protest will not be “filed” until the Executive Director has reviewed it for compliance with the Board’s enabling statutes and regulations. If the Executive Director deems the document complies, it shall be filed as a protest (13 CCR 598).

Failure of a dealer to file a timely protest with the Board will result in a loss of the right to a hearing before the Board. ***This could result in the modification becoming effective as stated in the notice.***

### **Required Elements of Protest**

A protest of modification or replacement of an existing franchise must contain all of the following (see Appendix for sample Form A and content requirements):

<b><i>Content Requirements</i></b>	<b><i>Regulation Authority</i></b>
Must be in writing and be signed by a franchisee or its attorney.	13 CCR 583
Must be responsive to the specific grounds of the modification or replacement set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR 585(b)
Must set forth the franchisee’s mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. [All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer’s attorney or agent, if so represented.]	13 CCR 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR 585(g)
Franchisee may submit as exhibits to the protest any physical evidence relevant to the matter with an adequate description in the protest.	13 CCR 585(c)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check or money order payable to the New Motor Vehicle Board.	13 CCR 553.40
Franchisee shall serve a copy of the protest upon the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR 584

## ***MODIFICATION OF FRANCHISE, continued***

### **Good Cause**

If a timely protest is filed, the manufacturer or distributor cannot modify the franchise if such modification would substantially affect a dealer's sales or service obligations or investment until a hearing has been held by the Board. At the hearing, the dealer has the initial burden to establish that there is a proposed modification, which would substantially affect the dealer's sales or service obligations or investment. If the dealer meets this burden, the burden of proof shifts to the manufacturer or distributor to prove "good cause" for the modification. In making a determination of good cause pursuant to Vehicle Code sections 3061 or 3071, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

<b><i>Circumstances</i></b>	<b><i>Vehicle Code Section</i></b>
Amount of business transacted by the franchisee, as compared to the business available to the franchisee.	3061(a), 3071(a)
Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.	3061(b), 3071(b)
Permanency of the investment.	3061(c), 3071(c)
Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.	3061(d), 3071(d)
Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public. (Note: In the case of RVs, not all franchise agreements require service facilities, equipment, vehicle parts, and qualified service personnel.)	3061(e), 3071(e)
Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee.	3061(f), 3071(f)
Extent of the franchisee's failure to comply with the terms of the franchise.	3061(g), 3071(g)

The modification will not be permitted if the Board decides the manufacturer or distributor failed to establish good cause for the intended modification.

If a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the protest by the Board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

## ***ADDITIONAL OR RELOCATED FRANCHISE***

### **Statutory Authority for Protest**

Vehicle Code sections 3062(a)(1) and 3072(a)(1) give a dealer the right to protest an additional dealership or relocation of an existing dealership of the same line-make within in a ten-mile radius of the protesting dealer's dealership. Any protest filed pursuant to this section is, by statute, filed against the manufacturer or distributor that is attempting to establish or relocate one of its dealers.

**NOTE:** The proposed new dealer, or the existing dealer desiring to relocate, may appear in the proceedings as an interested individual. The rights of an interested individual to participate in the proceedings are somewhat limited, and subject to the administrative law judge's management of the hearing. In general, interested individuals have no right to formal discovery or right of cross-examination at the hearing.

### **Franchisor's Notice of Additional or Relocated Franchise**

Vehicle Code sections 3062(a)(1) and 3072(a)(1) require that the manufacturer or distributor must first give written notice to the Board and to dealerships of the "same line-make" within the "relevant market area." The notice language shall be textually segregated in a separate paragraph so that the intention of the franchisor to establish or relocate a dealership is not intermingled with or obscured by the surrounding text. (13 CCR 593.1.)

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, the following statement<sup>2</sup>:

**"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest."**

For motor vehicles other than RVs, "line-make" is not defined in the code. What is or is not a same "line-make" is obvious in most situations. However, gray areas can exist. In this guide, the working definition of "line-make" for the automobile industry corresponds to that used by the DMV as a classification system for registering vehicles, licensing dealers, and resolving questions related to OL-124 relevant market area requirements. For instance, in the automotive industry, a manufacturer such as General Motors would have several "makes" including Pontiac, Chevrolet, and Cadillac. Each "make", in turn, would be comprised of several "lines" or

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<sup>2</sup> Effective January 1, 2004, the position of Secretary was changed to Executive Director in the Vehicle Code and California Code of Regulations. However, Vehicle Code section 3072 still references "secretary." The statutorily required notice sent to RV dealers should continue to reference secretary until clean-up legislation has been chaptered.

***ADDITIONAL OR RELOCATED FRANCHISE, continued***

**Franchisor's Notice of Additional or Relocated Franchise, continued**

models, e.g., Chevrolet has, Silverado, Impala, and Tahoe “lines” or models.

For the RV industry which lacks uniformity, "recreational vehicle line-make" is defined in Vehicle Code section 3072.5 as: “a group or groups of recreational vehicles defined by the terms of a written agreement that complies with Section 331.” It is therefore essential that RV franchisors are precise when defining a line-make in RV franchise agreements and ensure that their makes are registered with DMV.

Relevant market area is defined in Vehicle Code section 507 as “any area within a radius of 10 miles from the site of a potential new dealership.” The distance is determined by a straight-line measurement between the nearest points of the new dealership’s location and the protesting dealership’s location. There are times when a survey will be necessary to determine whether a dealer desiring to protest is within the relevant market area.

## ***ADDITIONAL OR RELOCATED FRANCHISE, continued***

### **Exceptions to the Right to Protest**

#### New Motor Vehicle Dealers (including RVs)

There are exceptions to the requirement of notice to existing dealers within the relevant market area of a franchisor's intent to establish or relocate a dealership. These exceptions are located in Vehicle Code section 3062, and provide that no notice is required to be given, and there is no right to protest, if:

1. The relocation is of an existing dealership to a new location that is both within the same city as, and is within one mile from, the existing (relocating) dealership location;
2. The establishment of a dealership at the same location of a dealership that has been out of operation for less than one year;
3. The relocation entails the establishment at any location of a dealership that is both within the same city as, and is within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days; or
4. The establishment entails a display of vehicles at fairs, expositions, or similar exhibits provided that no actual sales are made at the event and the display does not exceed 30 days.

Vehicle Code section 3062 requires that if an "off-site sale" is intended, the manufacturer or distributor must give notice to all dealers of the same line-make within 10 miles of the proposed site. Such dealers would have a right to protest the off-site sale, even though a financial institution and a licensed dealer sponsor the event.

#### Recreational Vehicle Dealers Only

For RVs, the exceptions to notice requirements are set forth in Vehicle Code section 3072. The exceptions are essentially the same as provided in Vehicle Code 3062 as stated above with the addition of two more exceptions. One exception is for an annual show sponsored by a national trade association of recreational vehicle manufacturers that complies with all of the requirements of subdivision (d) of Vehicle Code section 11713.15 (Veh. Code § 3072(b)(4)). The other exception is a provision that would prevent existing dealers of the same line-make within the same relevant market area from protesting each other's location when the bill takes effect on January 1, 2004 (Veh. Code § 3072(b)(5)).

### **Time Frame for Filing Protest**

Filing a timely protest will preclude the manufacturer or distributor from establishing or relocating the dealership until the Board resolves the protest. The chart below identifies the protest filing periods and effective dates of the relocation or establishment of a dealership.

***ADDITIONAL OR RELOCATED FRANCHISE, continued***

**Time Frame for Filing Protest, continued**

<b><i>Type of Notice</i></b>	<b><i>Filing Period</i></b>	<b><i>Effective Date of Relocation/Establishment</i></b>
A notice by franchisor of intent to establish or relocate franchisee.	20 days from dealer's receipt of notice <b>or</b> 20 days after the end of any appeal procedure provided by the manufacturer or distributor, whichever is later.	As stated by manufacturer or distributor.

If, within the above filing period, a franchisee files with the Board a request for additional time to file a protest, the Board or its Executive Director, upon a showing of good cause, may grant an additional 10 days to file the protest.

If no protest is filed, or if the protest is not filed within the statutory filing period, the manufacturer or distributor will be able to establish the proposed dealership or relocate the existing dealership without proceedings before the Board.

**Required Elements of Protest**

The time of filing and content of protests pursuant to Vehicle Code sections 3062, and 3072 are set forth in detail in 13 CCR 585.

A protest of the relocation or establishment of a franchise must contain all of the following (see Appendix for sample Form A and content requirements):

***ADDITIONAL OR RELOCATED FRANCHISE, continued***

**Required Elements of Protest, continued**

<b><i>Content Requirements</i></b>	<b><i>Regulation Authority</i></b>
Must be in writing and be signed by a franchisee or its attorney.	13 CCR 583
Must be responsive to the specific grounds of the establishment or relocation set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. [All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.]	13 CCR 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR 585(g)
Franchisee may submit as exhibits to the protest any physical evidence relevant to the matter with an adequate description in the protest.	13 CCR 585(c)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check or money order payable to the New Motor Vehicle Board.	13 CCR 553.40
Franchisee shall serve a copy of the protest upon the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR 584

**Good Cause**

If a timely protest is filed, the manufacturer or distributor cannot establish an additional franchise or relocate an existing franchise until a hearing has been held by the Board and the Board acts on the proposed decision. At the hearing, the protesting dealer has the burden of proving that there is good cause not to allow the establishment of the additional dealer or relocation of an existing dealership. In making a determination of good cause pursuant to Vehicle Code sections 3063 or 3073, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:



***ADDITIONAL OR RELOCATED FRANCHISE, continued***

**Good Cause, continued**

<b><i>Circumstances</i></b>	<b><i>Vehicle Code Section</i></b>
Permanency of the investment.	3063(a), 3073(a)
Effect on the retail motor vehicle business and the consuming public in the relevant market area. For RVs, the effect on the retail recreational vehicle business and the consuming public in the relevant market area.	3063(b), 3073(b)
Whether it is injurious to the public welfare for an additional franchise to be established.	3063(c), 3073 (c)
Whether the franchisees of the same line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel. For RVs, whether the franchisees of the same recreational vehicle line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the recreational vehicle line-make in the market area. (Note: In the case of RVs, adequate sales shall be considered, however, not all RV franchise agreements require service facilities, equipment, vehicle parts, and qualified service personnel.)	3063(d), 3073(d)
Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.	3063(e), 3073(e)

If the Board decides the protesting dealer is unable to prove good cause not to allow the establishment or relocation, the manufacturer or distributor will be permitted to proceed with its intended action.

## ***ADDITIONAL OR RELOCATED SATELLITE WARRANTY FACILITY***

### **Statutory Authority for Protest**

Vehicle Code section 3062(a)(2) gives a new motor vehicle dealer the right to protest an additional satellite warranty facility or relocation of an existing satellite warranty facility within 2 miles of any dealership of the same line-make. Satellite warranty facility is defined as “any facility operated by a franchisee where authorized warranty repairs and service are performed and the offer for sale or lease, the display for sale or lease, or the sale or lease of new motor vehicles is not authorized to take place.” (Veh. Code § 3062(e)(2).) Any protest filed pursuant to this section is, by statute, filed against the manufacturer or distributor that is attempting to establish or relocate one of its satellite warranty facilities. There are no comparable statutory provisions there are no comparable provisions for RV dealers for such protests.

### **Franchisor’s Notice of Additional or Relocated Satellite Warranty Facility**

Vehicle Code section 3062(a)(2) requires that the manufacturer or distributor must first give written notice to the Board and to dealerships of the same line-make within 2 miles of the proposed location. The notice language shall be textually segregated in a separate paragraph so that the intention of the franchisor to establish or relocate a dealership is not intermingled with or obscured by the surrounding text. (13 CCR 593.1.)

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, the following statement:

**“NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.”**

### **Time Frame for Filing Protest**

Filing a timely protest will preclude the manufacturer or distributor from establishing or relocating the satellite warranty facility until the protest is resolved by the Board. The chart on the next page identifies the protest filing periods and effective dates of the relocation or establishment of a satellite warranty facility.

If, within the filing period set forth in the table, a franchisee files with the Board a request for additional time to file a protest, the Board or its Executive Director, upon a showing of good cause, may grant an additional 10 days to file the protest.

If no protest is filed, or if the protest is not filed in time, the manufacturer or distributor will be able to establish the proposed satellite warranty facility or relocate the existing satellite warranty facility without proceedings before the Board.

***ADDITIONAL OR RELOCATED SATELLITE WARRANTY FACILITY, continued***

<b><i>Type of Notice</i></b>	<b><i>Filing Period</i></b>	<b><i>Effective Date of Relocation/ Establishment</i></b>
A notice by franchisor of intent to establish or relocate satellite warranty facility.	20 days from dealer's receipt of notice <b>or</b> 20 days after the end of any appeal procedure provided by the manufacturer or distributor, whichever is later.	As stated by manufacturer or distributor.

**Required Elements of Protest**

A protest of the relocation or establishment of a satellite warranty facility must contain all of the following (see Appendix for sample Form A and content requirements):

<b><i>Content Requirements</i></b>	<b><i>Regulation Authority</i></b>
Must be in writing and be signed by a franchisee or its attorney.	13 CCR 583
Must be responsive to the specific grounds of the establishment or relocation set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. [All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.]	13 CCR 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR 585(g)
Franchisee may submit as exhibits to the protest any physical evidence relevant to the matter with an adequate description in the protest.	13 CCR 585(c)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check or money order payable to the New Motor Vehicle Board.	13 CCR 553.40
Franchisee shall serve a copy of the protest upon the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR 584

## ***ADDITIONAL OR RELOCATED SATELLITE WARRANTY FACILITY, continued***

### **Good Cause**

If a timely protest is filed, the manufacturer or distributor cannot establish an additional satellite warranty facility or relocate an existing satellite warranty facility until a hearing has been held by the Board and the Board acts on the proposed decision. At the hearing, the protesting dealer has the burden of proving that there is good cause not to allow the establishment of the additional satellite warranty facility or relocation of an existing satellite warranty facility.

In making a determination of good cause pursuant to Vehicle Code section 3063, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

<b><i>Circumstances</i></b>	<b><i>Vehicle Code Section</i></b>
Permanency of the investment.	3063(a)
Effect on the retail motor vehicle business and the consuming public in the relevant market area.	3063(b)
Whether it is injurious to the public welfare for an additional franchise to be established.	3063(c)
Whether the franchisees of the same line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel.	3063(d)
Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.	3063(e)

If the Board decides the protesting dealer is unable to prove good cause not to allow the establishment or relocation, the manufacturer or distributor will be permitted to proceed with its intended action.

## ***COMPENSATION FOR DELIVERY AND PREPARATION***

### **Statutory Authority**

Vehicle Code sections 3064 and 3074 require every manufacturer and distributor to specify the dealer's delivery and preparation obligations.

### **Franchisor's Notice of Compensation for Delivery and Preparation**

The manufacturers and distributors are required to file with the Board a copy of the obligations and a schedule of compensation to be paid to the dealers. The schedule of compensation must be reasonable.

### **Time Frame for Filing Protest**

There is no specific statutory time period in the Vehicle Code within which to file a protest involving delivery and preparation obligations and compensation. Failure to file a protest within a reasonable time, however, could result in a dealer losing the right to a hearing by the Board.

### **Required Elements of Protest**

The required content of a protest under Vehicle Code sections 3064 and 3074 is described in 13 CCR 586. A protest involving delivery and preparation obligations must contain all of the following (see Appendix for sample Form A and content requirements):

<b><i>Content Requirements</i></b>	<b><i>Regulation Authority</i></b>
Must be in writing and be signed by a franchisee or its attorney.	13 CCR 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. [All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.]	13 CCR 586(a)(3)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR 586(a)(4)
Franchisee may submit as exhibits to the protest any physical evidence relevant to the matter with an adequate description in the protest.	13 CCR 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check or money order payable to the New Motor Vehicle Board.	13 CCR 553.40
Franchisee shall serve a copy of the protest upon the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR 584

***COMPENSATION FOR DELIVERY AND PREPARATION, continued***

**Determination of Protest**

If a dealer files a protest challenging the reasonableness of the schedule, the Board will resolve the dispute in light of all the relevant circumstances including, but not limited to, the time required to perform each function and the appropriate labor rate.

In the event of a hearing, the dealer has the burden of proving that the schedule of compensation is not reasonable (Veh. Code § 3066(c)).

## ***COMPENSATION FOR WARRANTY REIMBURSEMENT***

### **Statutory Authority**

Vehicle Code sections 3065 and 3075 require every manufacturer or distributor to fulfill its warranty obligations and adequately and fairly compensate its dealers for labor and parts used to perform warranty service.

### **Franchisor's Notice of Compensation for Warranty Reimbursement**

The manufacturers and distributors are required to file copies of their warranty reimbursement schedules or formulas with the Board. The schedule or formula must be reasonable with respect to the time and compensation allowed.

### **Approval of Warranty Claims**

In addition, Vehicle Code sections 3065(d) and 3075(d) require that warranty claims be approved or disapproved within 30 days after their receipt by the franchisor. Any claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the thirtieth day.

Warranty claims that are approved must be paid within 30 days of approval. However, both Vehicle Code section 3065(d) and 3075(d) specifically state: "Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, shall not constitute a violation of this article." The word "article" refers respectively to Article 4, pertaining to motor vehicles other than RVs, and Article 5, pertaining to RVs.

### **Disapproval of Warranty Claims**

Vehicle Code sections 3065(c) and 3075(c) require that the franchisor that disallows a warranty claim for a defective part on the basis that the part was not defective must return such part to the dealer at the franchisor's expense or reimburse the dealer for the part, at the franchisor's option. In addition, the dealer is entitled to written notice of disapproval within 30 days after the warranty claims are received by the franchisor. The notice must contain the specific grounds for disapproval (Veh. Code §§ 3065(d) and 3075(d)).

### **Audits of Franchisee Warranty Records**

Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis, and for a period of 12 months after a claim is paid or a credit issued (Veh. Code §§ 3065(e) and 3075(e)). Franchisee claims for warranty compensation shall not be disapproved except for good cause (performance of nonwarranty repairs, lack of material documentation, or fraud). Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of the completion of the audit. However, if a false claim was submitted by a franchisee with

## ***COMPENSATION FOR WARRANTY REIMBURSEMENT, continued***

the intent to defraud the franchisor, a longer period for an audit and any resulting chargeback may be permitted if the franchisor obtains an order from the Board.

### **Time Frame for Filing Protest**

Protests involving warranty disputes are not subject to any specific statutory time limitations for filing. However, failure to file a protest within a reasonable time could result in a dealer losing the right to a hearing before the Board.

### **Required Elements of Protest**

The required content of a protest under Vehicle Code section 3065 or 3075 is described in 13 CCR 586. A protest involving warranty disputes must contain all of the following (see Appendix for sample Form A and content requirements):

<b><i>Content Requirements</i></b>	<b><i>Regulation Authority</i></b>
Must be in writing and be signed by a franchisee or its attorney.	13 CCR 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. [All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.]	13 CCR 586(a)(3)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR 586(a)(4)
Franchisee may submit as exhibits to the protest any physical evidence relevant to the matter with an adequate description in the protest.	13 CCR 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check or money order payable to the New Motor Vehicle Board.	13 CCR 553.40
Franchisee shall serve a copy of the protest upon the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR 584

### **Determination of Protest**

If a protest is filed, the Board shall determine whether the schedule or formula is reasonable, taking into account what the dealer's labor rate is to its retail customers. In the event of a hearing, the franchisee has the burden of proving that the warranty reimbursement schedule is not reasonable, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor where that issue is material. (Veh. Code § 3066(c).)



## ***FRANCHISOR INCENTIVE PROGRAM REIMBURSEMENT***

### **Statutory Authority**

Vehicle Code sections 3065.1 and 3076.

### **Franchisor's Notice of Denial of Franchisor Incentive Program**

Vehicle Code sections 3065.1(a) and 3076(a) require that the franchisor, who denies payment under the terms of a franchisor incentive program, shall notify the franchisee within 30 days and provide specific grounds upon which the disapproval was based.

### **Approval/ Disapproval of Franchisor Incentive Program**

Any claim not specifically disapproved in writing within 30 days shall be deemed approved on the 30<sup>th</sup> day. If incentive program compensation claims are approved, they must be paid within 30 days of approval. However, these sections each provide that the failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of the respective articles referred to. The word "article" refers respectively to Article 4, pertaining to motor vehicles other than RVs, and Article 5, pertaining to RVs.)

### **Audits of Franchisee Incentive Program**

Vehicle Code sections 3065.1(b) and 3076(b) provide for audits of franchisee incentive program records if reasonable and for a period of 18 months after a claim is paid or a credit issued. Any chargeback to a franchisee for incentive program compensation shall be made within 90 days of completion of the audit. However, if a false claim was submitted by the franchisee with the intent to defraud the franchisor, a longer period for the audit and any resulting chargeback may be permitted if the franchisor obtains an order from the Board.

### **Time Frame for Filing Protest**

Following the disapproval of a claim, a franchisee shall have one year from receipt of the notice of disapproval in which to appeal and file a protest with the Board.

### **Required Elements of Protest**

The required content of a protest under Vehicle Code sections 3065.1 or 3076 is described in 13 CCR 586.

### ***FRANCHISOR INCENTIVE PROGRAM REIMBURSEMENT, continued***

A protest involving franchisor incentive program disputes must contain all of the following (see Appendix for sample Form A and content requirements):

Content Requirements	Regulation Authority
Must be in writing and signed by a franchisee or its attorney.	13 CCR 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. [All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.]	13 CCR 586(a)(3)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR 586(a)(4)
Franchisee may submit as exhibits to the protest any physical evidence relevant to the matter with an adequate description in the protest.	13 CCR 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check or money order payable to the New Motor Vehicle Board.	13 CCR 553.40
Franchisee shall serve a copy of the protest upon the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR 584

#### **Good Cause**

Franchisee claims for incentive program compensation shall not be disapproved except for good cause, such as ineligibility under the terms of the incentive program, lack of material documentation, or fraud.

#### **Determination of Protest**

The franchisee has the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor where that issue is material.

## ***HEARING PROCEDURES***

### **Pre-Hearing Procedure**

Upon receiving a protest, the Board shall institute hearing proceedings akin to those of a formal civil trial, including the scheduling of various pre-hearing conferences, settlement conferences, arrangements for discovery, identification of witnesses, and so on. The Board may impose sanctions if a party fails to comply with the Board's discovery orders or fails to participate properly in a settlement conference.

### **Subpoenas**

Authority for subpoenas in Board proceedings is found in Vehicle Code sections 3050.1 and 3050.2, and 13 CCR section 551.2. Unlike the civil courts, the parties cannot issue their own subpoenas. Upon the request of any party, the Board, its Executive Director or an administrative law judge may issue subpoenas for the production of papers, records, and books by a witness or a deponent, and the appearance of a nonparty witness or deponent. Hearing subpoenas are issued in accordance with 13 CCR 551.2(b), and an affidavit is not required to support the request. For a hearing subpoena duces tecum, an affidavit must accompany the request.

Subpoenas for the attendance and testimony of a non-party deponent, or for a subpoena duces tecum for deposition of a nonparty, are issued by the Board in accordance with Code of Civil Procedure section 2020 (13 CCR 551.2(c)). No affidavits are required. Counsel for the parties can issue notices of depositions to parties (Code Civ. Proc. §2025). Subpoenas for out-of-state, non-party witnesses or deponents will be issued by the Board, but need to be enforced in the out-of-state court (Code Civ. Proc. §2026).

Government Code section 11450.30 permits a person served with a subpoena or a subpoena duces tecum to object to its terms by a motion for a protective order, including a motion to quash. The assigned administrative law judge would resolve the objection. The administrative law judge may make another order that is appropriate to protect the parties or the witness from unreasonable or oppressive demands, including violations of the right to privacy. Also, see paragraph below, "Hearings Open to the Public; Protective Orders" for references to authority for protective orders.

Following service of the subpoena upon the witness or deponent, the original subpoena and an executed proof of service shall be filed with the Board (13 CCR 551.2(d)).

### **Summary of Board Action**

All hearings on protests filed pursuant to Vehicle Code sections 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076, may be considered by the entire Board or may, at its discretion be conducted by one of the Board's administrative law judges. At the hearing, oral argument is heard, evidence is admitted, testimony is received, and a written decision is rendered. The procedures are described in detail in Vehicle Code section 3066. The Board upon receiving a

## ***HEARING PROCEDURES, continued***

### **Summary of Board Action, continued**

protest does the following:

<b><i>Step</i></b>	<b><i>Action</i></b>
1	By order fix a time, within sixty (60) days of the order, and place of hearing.
2	<p>Send a copy of the order to the franchisor, the protesting franchisee, and all parties, which have requested notification by the Board of protests and decisions by the Board.</p> <ul style="list-style-type: none"><li>• Except in the case of a franchisee who deals exclusively in motorcycles, the Board or its Executive Director may accelerate or postpone the date initially established for the hearing.</li><li>• For the purpose of accelerating or postponing the hearing date, good cause must be shown and in no event may the rescheduled date be more than ninety (90) days after the Board's initial order.</li><li>• "Good cause" for accelerating or postponing a hearing includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted.</li><li>• Application for continuance shall be in writing and filed with the Executive Director at least ten (10) days prior to the date of hearing. No continuances otherwise will be granted except in extreme emergencies such as serious accident or death.</li></ul>
3	All hearings on protests filed may be considered by the entire Board or may, at its discretion, be conducted by one of the Board's administrative law judges.

### **Stipulation of Fact**

A hearing initiated by the filing of a protest may be held in whole or in part on a stipulation of fact, which is essentially an agreement between the parties defining points that are not in contention, and other parts of the dispute that have been resolved. Stipulations are of value in that they tend to facilitate and expedite conflict resolution. See 13 CCR 587 for procedural details of stipulation of fact before the Board.

### **Stipulated Decisions**

The Board may adopt stipulated decisions and orders without a hearing pursuant to Vehicle Code

## ***HEARING PROCEDURES, continued***

### **Stipulated Decisions, continued**

section 3066 to resolve one or more issues raised by a protestant or petitioner before the Board. If the Board adopts a stipulated decision and order to resolve a protest filed under Vehicle Code section 3060, and the parties stipulate that good cause exists to terminate, a hearing requiring a determination of good cause will not be required (Veh. Code § 3050.7(b)). The provisions of section 3050.7 do not apply to protests filed under Vehicle Code section 3070 as there is currently no explicit reference to section 3070 in section 3050.7, as there is to section 3060.

### **Hearings Open to the Public; Protective Orders**

Hearings before the Board or an administrative law judge designated by the Board are open to the public. For good cause shown, a party may seek an order closing all or part of the hearing or for other protective orders as set forth in Government Code section 11425.20 and 1 CCR 1036. This must be done by filing a motion that contains all of the following: the identity of the materials or parts of the record to be protected; the factual basis to support the existence of an overriding interest that supports sealing the record and overcomes the right of public access to the record; a demonstration that a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; the proposed sealing is narrowly tailored; and that no less restrictive means exist to achieve the overriding interest.

### **Failure to Appear at a Hearing**

Any party who fails to appear at a hearing will not be entitled to a further opportunity to be heard unless good cause for such failure is shown to the Board or to the administrative law judge within five (5) days thereafter. The lack of such a showing may, in the discretion of the Board or the administrative law judge, be interpreted as an abandonment of interest by the party in the subject matter of the proceeding (13 CCR 589).

### **Decision of the Board**

When matters are submitted to the Board for decision, or the Board receives a proposed decision of the administrative law judge, the Board shall take the matter under submission and conduct deliberations in executive session. The deliberations of the Board shall be in private and shall not be reported.

The decision of the Board shall be in writing, contain findings of fact, and a determination of the issues presented. The Board shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. The decision becomes final when delivered to the parties. If the Board fails to act within thirty (30) days after close of a hearing, within thirty (30) days after the Board receives a proposed decision where the case is heard before an administrative law judge, or within a period which may be mutually agreed upon by the parties, then the proposed action of the franchisor shall be deemed to be approved. (Veh. Code § 3067.)

## ***HEARING PROCEDURES, continued***

### **Court Reporting and Transcripts of Board Proceedings**

The Board funds and arranges for a court reporter for all Board meetings, all hearings on the merits of a protest or a petition and for all hearings on motions that may be dispositive. Parties to actions before the Board may order transcripts of hearings from the court reporter, but the transcripts must be paid for and ordered through Board staff. Upon receipt of payment, staff will forward requests to the court reporter, which shall then deliver a copy or copies directly to the party ordering the transcript. Please contact staff for questions concerning payment for expedited transcript preparation and delivery.

For pre-hearing conferences, rulings on objections to production of documents or other non-dispositive matters, such as motions for change of venue, consolidation, continuation, etc., the Board does not request a court reporter or order transcripts. Individuals wishing to have such proceedings recorded and transcribed must make arrangements with Board staff for payment and scheduling of the services.

## **PETITIONS**

### **Statutory Authority for Petitions**

Vehicle Code section 3050(c) provides for any person to petition the Board to consider any matter concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative.

### **Filing a Petition with the Board**

A licensee or member of the public wishing to bring a dispute before the Board pursuant to Vehicle Code section 3050(c) is required to file a petition (see Attachment for sample Form B and content requirements.). In the past, petitions filed with the Board have alleged such things as the unreasonable refusal of a franchisor to approve a change in ownership, unreasonable refusal of a franchisor to approve a relocation, discrimination in allocation of products, failure to supply products authorized to be sold under the terms of the franchise, and other violations of the Vehicle Code. Such petitions requested a hearing before the Board and sought relief in the form of a Board order that required the respondent to either do, undo, or refrain from doing some action that caused harm to the licensee petitioner.

However, as a result of *Mazda Motor of America, Inc., v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, Inc., Real Party in Interest* (2003) 110 Cal. App. 4<sup>th</sup> 1451; 2 Cal.Rptr.3d 866, the Board's jurisdiction to hold hearings and issue such orders is now limited to petitioners who are members of the public under Vehicle Code section 3050(c)(2). In all instances where licensees are the petitioners, the Board may only direct the Department to investigate or take a licensing action against the respondent under Vehicle Code section 3050(c)(1) and (3). See page 2 above for further detail.

In all circumstances, the petition shall be served on the respondent and proof of service filed with the Board.

### **Time Frame for Filing Petition**

There are no specific statutory time limits in the Vehicle Code within which a petition must be filed, but failure to file the petition within a reasonable time after the occurrence of events giving rise to the basis for the petition could result in the Board refusing to take any action.

The respondent shall file a written answer within 30 days of the date the petition is served on the respondent (13 CCR 555.1 to 558).

### **Petition Filing Fee**

A filing fee of \$200, which should be in the form of a check or money order payable to the New Motor Vehicle Board, must accompany the petition.

## ***PETITIONS, continued***

### **Required Elements of Petition**

The required content of a petition under Vehicle Code section 3050(c) is described in 13 CCR 555 (see Appendix for sample Form B and content requirements).

<b><i>Content Requirements</i></b>	<b><i>Regulation Authority</i></b>
Must set forth in clear and concise language the nature of the matter, which the petitioner wishes the Board to consider.	13 CCR 555
Must set forth the petitioner's name, mailing address and telephone number; the name, mailing address and telephone number of the petitioner's attorney or authorized agent, if any; and the name and address of the licensee or applicant for license (respondent) whose activities or practices are in question. [All correspondence and notices to the petitioner shall thereafter be addressed to petitioner's said address, if the petitioner appears in person, or to the address of the petitioner's attorney or agent, if so represented.]	13 CCR 555(a)
Must include the names, residence addresses and business addresses of persons and the dates, places and specific actions or practices involved.	13 CCR 555(b)
Shall include a concise recitation of applicable law and citation to the applicable statutes and authorities if the actions or practices described in the petition are alleged to be a violation of law.	13 CCR 555(c)
For petitioners who are members of the public only, petitioner shall indicate if the petitioner desires that the Board mediate, arbitrate, or resolve a difference between the petitioner and respondent, and describe the relief sought.	13 CCR 555(d)
Petitioner may submit as exhibits to the petition any physical evidence relevant to the matter with an adequate description in the petition.	13 CCR 555(e)
For petitioners who are members of the public only, petitioner shall set forth an estimate of the number of days required to complete the hearing.	13 CCR 555(f)
For petitioners who are members of the public only, petitioner shall request a pre-hearing conference if one is desired.	13 CCR 555(g)
Petitioner shall simultaneously deliver a \$200 filing fee in the form of a check or money order payable to the New Motor Vehicle Board.	13 CCR 553.40
Petitioner shall serve a copy of the petition upon the respondent and proof of service shall accompany the petition submitted to the Board.	13 CCR 555.1



## ***PETITIONS, continued***

### **First Consideration**

Upon the filing of a petition with the Board, a copy shall be forwarded by the Executive Director of the Board to each Board member for consideration. If the petitioner is a member of the public seeking relief under Vehicle Code section 3050(c)(2), unless, within 10 days of receipt of a copy of the petition, any member of the Board notifies the Executive Director of an objection, the Executive Director shall set the matter for a hearing.

If the petitioner is a licensee or member of the public seeking relief under Vehicle Code section 3050(c)(1) and/or (3), these petitions would not be submitted to the Board for first consideration, as the authority for first consideration, 13 CCR 557 of the regulations, limits first consideration to matters in which a hearing is sought, i.e., section 3050(c)(2) petitions. These petitions would be agendaized for consideration of the relief requested by the Petitioner at the next regularly scheduled meeting. These petitions are not assigned to an Administrative Law Judge and are not subject to the normal evidentiary hearing process. The Board members, at a noticed meeting, would hear from the parties by way of written and oral arguments, and consider granting the relief requested.

### **Challenge to Presiding Officer**

A party may request disqualification of a Board member or an administrative law judge for cause prior to the taking of evidence by filing an affidavit stating the grounds for the request (13 CCR 551.1). Further, 13 CCR 551.12 entitles a party in a Board proceeding to one disqualification without cause (peremptory challenge) of an assigned administrative law judge by making the challenge no later than 5 or 10 days prior to the hearing depending on factors set forth in 13 CCR 551.12. Parties would not be entitled to a peremptory challenge in any proceeding relating to applications for temporary relief or interim orders. Except for the convenience of the Board or for good cause shown, no hearing shall be continued by the filing of a peremptory challenge.

### **Motion for Intervention**

Title 13 CCR 551.13 permits any person, including a Board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative to file a motion to intervene in a pending petition.

### **Amicus Curiae Briefs**

The Board, its Executive Director, or an administrative law judge may, in his or her discretion, allow the filing of amicus curiae briefs.

## ***PETITIONS, continued***

### **Summary of Board Action**

For petitions seeking relief under Vehicle Code section 3050(c)(1) or (3) brought by a franchisee, including RV franchisees, a member of the Board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any petition (Veh. Code § 3050(c)). For petitions brought by members of the public seeking Vehicle Code section 3050(c)(1) and/or (3) relief, all members of the Board may participate.

After considering this type of petition, the Board may do any one or any combination of the following:

- 1) Direct the Department to conduct an investigation and submit a written report;
- 2) Order the Department to exercise any and all authority or power that the Department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of respondent; and/or
- 2) Order the petition dismissed, with or without prejudice.

As stated above, if the Petitioner is a member of the public seeking relief under Vehicle Code section 3050(c)(2), the Board retains the authority to hear and or mediate the matter.

### **Hearing Procedures**

The Board's powers in regards to petitions are discretionary, and there is no automatic right to a hearing for a member of the public seeking relief under Vehicle Code section 3050(c)(2). If the Board orders a hearing, the pre-hearing procedures are very similar to those involving protests (see page 28). For procedural details for hearings on petitions, see 13 CCR 580.

### **Informal Mediation**

Prior to a member of the public initiating a petition seeking relief under Vehicle Code section 3050(c)(2), a party or parties may request the Board informally mediate the potential dispute, that is, the activities or practices of a licensee or applicant for a license that are in question (13 CCR 551.14 through 551.17). If both parties consent to informal mediation, then a mutually agreeable date for the mediation is calendared, prior to which each party files and serves a pre-mediation statement setting forth the facts, issues and proposed resolution of the matter. The Board, its Executive Director, or an administrative law judge designated by the Board or its Executive Director preside over the informal mediation and may authorize discovery (other than interrogatories) as appropriate. Evidence in the form of declarations may also be considered. All communications, negotiations, and settlement discussions between the participants of an informal mediation are confidential. At any time during this process, either party may request that the informal mediation be converted to a formal petition.

***PETITIONS, continued***

**Members of the Public in Relation to the New Recreational Vehicle Transactions**

Members of the public have all the rights and remedies available in disputes with licensees in new recreational vehicle transactions as they do in transactions with other types of new motor vehicles under the jurisdiction of the Board with one distinction. Vehicle Code section 3078 states:

“a) If the board receives a complaint from a member of the public seeking a refund involving the sale or lease of, or a replacement of, a recreational vehicle, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, from a motor vehicle dealership, as defined in paragraph (1) of subdivision (e) of Section 3072, the board shall recommend that the complainant consult with the Department of Consumer Affairs.”

Thus, if a member of the public specifically seeks a refund or a replacement of a new recreational vehicle, the Board shall recommend that the complaint be referred to the Department of Consumer affairs, rather than the Board. However, nothing precludes a member of the public from seeking help from the Board in resolving the dispute as is available for any other new motor vehicle purchaser.

## ***APPEALS FROM DECISIONS OF THE DEPARTMENT OF MOTOR VEHICLES***

### **Statutory Authority for Appeals**

Vehicle Code sections 3050(b) and 3052 provide for the right of an applicant for, or holder of a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative to file an appeal with the Board after any final decision of the Director of the Department which adversely affects the occupational license of the appellant, such as the suspension or revocation of the license (see Appendix for sample Form C and content requirements). All Vehicle Code sections providing Board authority for appeals are applicable to new recreational vehicle licensees.

### **Board's Responsibilities in an Appeal Re: Department Decision**

The Board acts as an appellate body reviewing the record of the Departmental proceedings, and in deciding the appeal, may also consider any other evidence properly brought before the Board. Briefs on the disputed issues are filed by the appellant and the Department (Veh. Code § 3053).

### **Motion for Intervention**

Title 13 CCR 551.13 permits any person, including a Board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative to file a motion to intervene in a pending appeal.

### **Amicus Curiae Briefs**

The Board, its Executive Director, or an administrative law judge may, in his or her discretion, allow the filing of amicus curiae briefs.

### **Actions Board May Take in an Appeal Re: Penalty**

Vehicle Code section 3054 gives the Board the power to reverse or amend the decision of the Department for any of the following reasons:

- 1) The Department has proceeded without or in excess of its jurisdiction.
- 2) The Department has proceeded in a manner contrary to the law.
- 3) The decision is not supported by the findings.
- 4) The findings are not supported by the weight of the evidence in the light of the whole record reviewed in its entirety, including any and all relevant evidence adduced at any hearing of the Board.
- 5) There is relevant evidence, which in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing.
6. The determination or penalty, as provided in the decision of the Department is not commensurate with the findings.

## ***APPEALS FROM DECISIONS OF THE DEPARTMENT, continued***

The Board also has the power to amend, modify, or reverse the penalty imposed by the Department (Veh. Code § 3055). This power has been construed by the courts to include the ability to increase penalties set by the Department (*Toyota of Visalia v. Department of Motor Vehicles* (1984) 155 Cal. App. 3d 315 (202 Cal. Rptr. 190), *appeal after remand*, (1987) 188 Cal. App. 3d 872 (233 Cal. Rptr. 708)).

In all cases, the Board shall enter its order within 60 days after the appeal is filed unless there is unavoidable delay in receiving the administrative record. Should the Board issue an order reversing the decision of the Department, the Board may direct the Department to reconsider the matter and take further action (Veh. Code § 3056).

The Board's order must be in writing and becomes final upon delivery of copies to the parties. The Board shall fix an effective date for its orders not more than 30 days from the day the order is served or remand the matter back to the Department for fixing an effective date (Veh. Code §3057).

### **Filing Appeals with the Board**

In general, the notice of appeal must be filed with the Board on the tenth day after the last day on which reconsideration of the final decision of the Department can be ordered (Veh. Code §3052(a) and 13 CCR 566), along with the filing fee of \$200. A copy of the notice of appeal shall be served on the Department and proof of service shall accompany the notice filed with the Executive Director of the Board (13 CCR 570). An appeal is filed on the date it is received by the Executive Director of the Board. An appeal mailed by registered mail shall be deemed filed on the postmark date.

### **Required Elements of an Appeal**

The contents of the notice of appeal are contained in 13 CCR 568 to which the reader is referred for detailed information.

### **Hearing Procedures**

For procedural details for hearings on appeals, see 13 CCR 580.

## ***JUDICIAL REVIEW***

### **Appeal to Superior Court**

Judicial review of final orders and decisions of the Board may be sought in Superior Court pursuant to Code of Civil Procedure section 1094.5 via a petition for writ of administrative mandamus. A petition for writ of administrative mandamus questions whether the Board proceeded without or in excess of jurisdiction, whether there was a fair hearing, and whether there was any prejudicial abuse of discretion. Parties seeking judicial review of a final order or decision should refer to Vehicle Code sections 3058 and 3068 and local rules of court.

## **Sample Forms of Pleading Format**

**Form A – Protest**

**Form B – Petition**

**Form C – Appeal**

## **SAMPLE FORM A**

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### **PLEADING FORMAT OF PROTEST**

*The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR 593, et seq. Sample forms can be obtained from the Board's website, <http://www.nmvb.ca.gov>.*

### **Identification of Attorney or Party Representing Self.**

In the top left hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and e-mail address, if available. Single space this section.

Skip one line then add which party is filing this document. In the case of a protest, the individual filing the protest is known as the "Protestant," whereas the individual responding would be the "Respondent."

- 1 \_\_\_\_\_ [name of attorney and state bar number, or name of party representing self]
- 2 \_\_\_\_\_ [address]
- 3 \_\_\_\_\_ [telephone number, fax number and e-mail address, if available]
- 4 \_\_\_\_\_ Attorney for [Protestant] or In pro per [if party representing him/herself]

Leave the upper right hand corner blank between lines 1 and 7 for the use of the Board.

### **Title of the Court.**

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD  
9 STATE OF CALIFORNIA

### **Title of the Case.**

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

### **Case Number.**

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

### **Nature of Filing and Name of Action.**

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.



11	In the Matter of the Protest of	)	
		)	
12	NAME OF DEALERSHIP,	)	Protest No. PR-
		)	
13	Protestant,	)	
		)	
14	vs.	)	PROTEST
		)	[Vehicle Code section
15	NAME OF FRANCHISOR,	)	3060, 3062, 3064, 3065, 3065.1,
		)	3070, 3072, 3074, 3075, and 3076]
		)	
16	Respondent.	)	
		)	

---

**Introduction.**

State the name of the party filing the document, the type of document filed (e.g., protest, response, motion) and the applicable statutory authority.

20 Protestant, [NAME OF PARTY/DEALERSHIP NAME], files this protest under the  
 21 provisions of the California Vehicle Code section [applicable code section] with  
 22 reference to the following facts:

**Body.**

Using numbered paragraphs, state the allegations in a clear and chronological order.

- 23 1. Protestant is a new motor vehicle dealer selling [type of new motor vehicle], and is located at [address]. Protestant's telephone number is [telephone number].
2. Respondent distributes [type/model of product] and is the franchisor of Protestant.
3. Protestant is represented in this matter by [attorney/law firm], whose address and telephone number are [address and telephone number].
4. On or about, [date of occurrence(s)], Protestant received from Respondent a notice that Respondent intends to [terminate/modify/relocate/establish] its existing franchise agreement effective [number of days] from Protestant's receipt of said notice. A copy of said letter is attached as Exhibit A.
5. Protestant generally denies each and every allegation contained in the written notice of [termination/modification/relocation/establishment].
6. Respondent does not have good cause to [terminate/modify/relocate/establish a new] the franchise by reason of the following facts:
  - (a) [Specific facts upon which Protestant bases the allegations].
7. Protestant and its attorneys of record desire to appear before the Board. The estimated length of hearing on this matter will take [number of days] to complete.
8. A Pre-Hearing Conference is requested.

Dated:

Signed:

## **SAMPLE FORM B1**

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### **PLEADING FORMAT OF PETITION – Vehicle Code section 3050 (c)(2)**

*The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR 593, et seq. Sample forms can be obtained from the Board's website, <http://www.nmvb.ca.gov>.*

#### **Identification of Attorney or Party Representing Self.**

In the top left hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and e-mail address, if available. Single space this section.

Skip one line then add which party is filing this document. In the case of a petition, the individual filing the petition is known as the "Petitioner," and the party responding would be the "Respondent."

1 \_\_\_\_\_ [name of attorney and state bar number, or name of party representing self]

2 \_\_\_\_\_ [address]

3 \_\_\_\_\_ [telephone number, fax number and e-mail address, if available]

\_\_\_\_\_ Attorney for [Petitioner] or In pro per [if party representing him/herself]

Leave the upper right hand corner blank between lines 1 and 7 for the use of the Board.

#### **Title of the Court.**

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD

9 STATE OF CALIFORNIA

#### **Title of the Case.**

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

#### **Case Number.**

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

#### **Nature of Filing and Name of Action.**

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

11	In the Matter of the Petition of	)	
		)	
12	NAME OF INDIVIDUAL,	)	Petition No. P-
		)	
13	Petitioner,	)	
		)	
14	vs.	)	<b>PETITION</b>
		)	[Vehicle Code section 3050(c)(2)]
15	NAME OF FRANCHISOR,	)	
		)	
16	Respondent.	)	
		)	

---

20 [NAME OF PARTY/DEALERSHIP NAME], petitions the New Motor Vehicle Board, pursuant to Vehicle Code section 3050(c), with reference to the following facts:

1. Petitioner is, and at all times mentioned herein, was an individual and consumer of a new motor vehicle or vehicles in the State of California.
2. Respondent is, and at all times mentioned herein, was a corporation authorized to do business and doing business in the State of California.
3. Petitioner is represented in this matter by (name, address, and telephone number of law firm, or other representative).
4. Petitioner's mailing address and telephone number are as follows:
5. Respondent's mailing address and telephone number are as follows:
6. (Outline the particulars of the dispute).
7. WHEREFORE, Petitioner prays as follows: (A hearing and relief available under Vehicle Code section 3050(c)(2).)

Dated:

Signed:

## **SAMPLE FORM B2**

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### **PLEADING FORMAT OF PETITION – Vehicle Code section 3050 (c)(1) or 3050 (c)(3)**

*The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR 593, et seq. Sample forms can be obtained from the Board's website, <http://www.nmvb.ca.gov>.*

#### **Identification of Attorney or Party Representing Self.**

In the top left hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and e-mail address, if available. Single space this section.

Skip one line then add which party is filing this document. In the case of a petition, the individual filing the petition is known as the "Petitioner," and the party responding would be the "Respondent."

1 \_\_\_\_\_ [name of attorney and state bar number, or name of party representing self]

2 \_\_\_\_\_ [address]

3 \_\_\_\_\_ [telephone number, fax number and e-mail address, if available]

\_\_\_\_\_ Attorney for [Petitioner] or In pro per [if party representing him/herself]

Leave the upper right hand corner blank between lines 1 and 7 for the use of the Board.

#### **Title of the Court.**

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD

9 STATE OF CALIFORNIA

#### **Title of the Case.**

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

#### **Case Number.**

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

#### **Nature of Filing and Name of Action.**

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

11	In the Matter of the Petition of	)	
		)	
12	NAME OF DEALERSHIP,	)	Petition No. P-
		)	
13	Petitioner,	)	
		)	
14	vs.	)	<b>PETITION</b>
		)	[Vehicle Code section 3050(c)(1)]
15	NAME OF FRANCHISOR,	)	[Vehicle Code section 3050(c)(3)]
		)	
16	Respondent.	)	
		)	

---

20 [NAME OF PARTY/DEALERSHIP NAME], petitions the New Motor Vehicle Board, pursuant to Vehicle Code section 3050(c), with reference to the following facts:

1. Petitioner is, and at all times mentioned herein, was a licensee of the Department of Motor Vehicles authorized to do business and doing business in the State of California.
2. Respondent is, and at all times mentioned herein, was a corporation authorized to do business and doing business in the State of California.
3. Petitioner is represented in this matter by (name, address, and telephone number of law firm).
4. Petitioner's mailing address and telephone number are as follows:
5. Respondent's mailing address and telephone number are as follows:
6. (Outline the particulars of the dispute).
7. WHEREFORE, Petitioner prays as follows: (That the Board provide relief available under Vehicle Code section 3050(c)(1) or 3050(c)(3).)

Dated:

Signed:

## **SAMPLE FORM C**

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### **PLEADING FORMAT OF AN APPEAL**

*The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR 593, et seq. Sample forms can be obtained from the Board's website: <http://www.nmvb.ca.gov>.*

### **Identification of Attorney or Party Representing Self.**

In the top left hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing him/herself, office address or residence address, telephone number, and e-mail address, if available. Single-space this section.

Skip one line then add which party is filing this document. In the case of an appeal, the individual filing the appeal would be the "Appellant."

1 \_\_\_\_\_ [name of attorney and state bar number, or name of party representing self]

2 \_\_\_\_\_ [address]

3 \_\_\_\_\_ [telephone number, fax number and e-mail address, if available]

4 \_\_\_\_\_ Attorney for [Appellant] or In pro per [if party representing him/herself]

Leave the upper right hand corner blank between lines 1 and 7 for the use of the Board.

### **Title of the Court.**

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD

9 STATE OF CALIFORNIA

### **Title of the Case.**

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

### **Case Number.**

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

### **Nature of Filing and Name of Action.**

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

11	In the Matter of the Appeal of	)	
		)	Appeal No. A-
12	NAME OF DEALERSHIP/MANUFACTURER	)	
		)	<b>NOTICE OF APPEAL</b>
13	Appellant,	)	[Vehicle Code section 3052]
		)	
14	vs.	)	
		)	
		)	
15	DEPARTMENT OF MOTOR VEHICLES,	)	
		)	
16	Respondent.	)	
		)	

---

**Body.**

Using numbered paragraphs, state the allegations in a clear and chronological order.

20 TO THE DIRECTOR OF THE DEPARTMENT OF MOTOR VEHICLES:

PLEASE TAKE NOTICE that [name of party] herein appeals from the Decision of the Director filed [date] pursuant to [applicable Vehicle Code section].

This Appeal is based on the following grounds:

1. The Department has proceeded without or in excess of its jurisdiction;
2. The Department has proceeded in a manner contrary to the law;
3. The determination of penalty, as provided in the Decision of the Department, is not commensurate with the findings.

This appeal is further based upon the pleadings and papers, exhibits, transcripts and related documents included in the record herewith, together with such other evidence, oral or documentary, as may be introduced at the hearing of this Appeal.

Appellant hereby requests an appearance before the above-entitled Board to present oral argument herewith, pursuant to the provisions of Vehicle Code section 3053.

Appellant is a new car dealer within the purview of Vehicle Code, Division 5, Chapter 4, section 11700, et seq.

Dated:

Signed:

## **Appendix I: Vehicle Code**

### **CALIFORNIA VEHICLE CODE** ***DIVISION 1. WORDS AND PHRASES DEFINED***

#### **“All-Terrain Vehicle”**

111. “All-terrain vehicle” means a motor vehicle subject to subdivision (a) of Section 38010 which is all of the following:

- (a) Designed for operation off of the highway by an operator with no more than one passenger.
- (b) Fifty inches or less in width.
- (c) Nine hundred pounds or less unladen weight.
- (d) Suspended on three or more low-pressure tires.
- (e) Has a single seat designed to be straddled by the operator, or a single seat designed to be straddled by the operator and a seat for no more than one passenger.
- (f) Has handlebars for steering control.

#### **“Autobroker or Auto Buying Service”**

166. An “autobroker or auto buying service” is a dealer, as defined in Section 285, who engages in the business of brokering, as defined in Section 232.5.

#### **“Board”**

232. The “board” is the New Motor Vehicle Board.

#### **“Brokering”**

232.5. “Brokering” is an arrangement under which a dealer, for a fee or other consideration, regardless of the form or time of payment, provides or offers to provide the service of arranging, negotiating, assisting, or effectuating the purchase of a new or used motor vehicle, not owned by the dealer, for another or others.

#### **“Dealer”**

285. “Dealer” is a person not otherwise expressly excluded by Section 286 who:

- (a) For commission, money, or other thing of value, sells, exchanges, buys, or offers for sale, negotiates or attempts to negotiate, a sale or exchange of an interest in, a vehicle subject to registration, a motorcycle subject to identification under this code, or a trailer subject to identification pursuant to Section 5014.1, or induces or attempts to induce any person to buy or exchange an interest in a vehicle and, who receives or expects to receive a commission, money, brokerage fees, profit, or any other thing of value, from either the seller or purchaser of the vehicle.
- (b) Is engaged wholly or in part in the business of selling vehicles or buying or taking in trade, vehicles for the purpose of resale, selling, or offering for sale, or consigned to be sold, or otherwise dealing in vehicles, whether or not the vehicles are owned by the person.



**Dealer; Exclusions**

286. The term “dealer” does not include any of the following:

(a) Insurance companies, banks, finance companies, public officials, or any other person coming into possession of vehicles in the regular course of business, who sells vehicles under a contractual right or obligation, in performance of an official duty, or in authority of any court of law, if the sale is for the purpose of saving the seller from loss or pursuant to the authority of a court.

(b) Persons who sell or distribute vehicles of a type subject to registration or trailers subject to identification pursuant to Section 5014.1 for a manufacturer to vehicle dealers licensed under this code, or who are employed by manufacturers or distributors to promote the sale of vehicles dealt in by those manufacturers or distributors. However, any of those persons who also sell vehicles at retail are vehicle dealers and are subject to this code.

(c) Persons regularly employed as salespersons by vehicle dealers licensed under this code while acting within the scope of that employment.

(d) Persons engaged exclusively in the bona fide business of exporting vehicles or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States, if no federal excise tax is legally payable or refundable on any of the transactions. Persons not engaged exclusively in the bona fide business of exporting vehicles, but who are engaged in the business of soliciting orders for the sale and delivery of vehicles, outside the territorial limits of the United States are exempt from licensure as dealers only if their sales of vehicles produce less than 10 percent of their total gross revenue from all business transacted.

(e) Persons not engaged in the purchase or sale of vehicles as a business, who dispose of any vehicle acquired and used in good faith, for their own personal use, or for use in their business, and not for the purpose of avoiding the provisions of this code.

(f) Persons who are engaged in the purchase, sale, or exchange of vehicles, other than motorcycles subject to identification under this code, which are not intended for use on the highways.

(g) Persons temporarily retained as auctioneers solely for the purpose of disposing of vehicle stock inventories by means of public auction on behalf of the owners at the owners' place of business, or as otherwise approved by the department, if intermediate physical possession or control of, or an ownership interest in, the inventory is not conveyed to the persons so retained.

(h) Persons who are engaged exclusively in the business of purchasing, selling, servicing, or exchanging racing vehicles, parts for racing vehicles, and trailers designed and intended by the manufacturer to be used exclusively for carrying racing vehicles. For purposes of this subdivision, “racing vehicle” means a motor vehicle of a type used exclusively in a contest of speed or in a competitive trial of speed which is not intended for use on the highways.

(i) Any person who is a lessor.

(j) Any person who is a renter.

(k) Any salvage pool.

(l) Any yacht broker who is subject to the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code) and who sells used boat trailers in conjunction with the sale of a vessel.

(m) Any licensed automobile dismantler who sells vehicles that have been reported for dismantling as provided in Section 11520.

(n) The Director of Corrections when selling vehicles pursuant to Section 2813.5 of the

Penal Code.

(o) (1) Any public or private nonprofit charitable, religious, or educational institution or organization that sells vehicles if all of the following conditions are met:

(A) The institution or organization qualifies for state tax-exempt status under Section 23701d of the Revenue and Taxation Code, and tax-exempt status under Section 501(c)(3) of the federal Internal Revenue Code.

(B) The vehicles sold were donated to the nonprofit charitable, religious, or educational institution or organization.

(C) The vehicles subject to retail sale meet all of the applicable equipment requirements of Division 12 (commencing with Section 24000) and are in compliance with emission control requirements as evidenced by the issuance of a certificate pursuant to subdivision (b) of Section 44015 of the Health and Safety Code. Under no circumstances may an institution or organization transfer the responsibility of obtaining a smog inspection certificate to the buyer of the vehicle.

(D) The proceeds of the sale of the vehicles are retained by that institution or organization for its charitable, religious, or educational purposes.

(2) An institution or organization described in paragraph (1) may sell vehicles on behalf of another institution or organization under the following conditions:

(A) The nonselling institution or organization meets the requirements of paragraph (1).

(B) The selling and nonselling institutions or organizations enter into a signed, written agreement pursuant to subparagraph (A) of paragraph (3) of subdivision (a) of Section 1660.

(C) The selling institution or organization transfers the proceeds from the sale of each vehicle to the nonselling institution or organization within 45 days of the sale. All net proceeds transferred to the nonselling institution or organization shall clearly be identifiable to the sale of a specific vehicle. The selling institution or organization may retain a percentage of the proceeds from the sale of a particular vehicle. However, any retained proceeds shall be used by the selling institution or organization for its charitable, religious, or educational purposes.

(D) At the time of transferring the proceeds, the selling institution or organization shall provide to the nonselling institution or organization, an itemized listing of the vehicles sold and the amount for which each vehicle was sold.

(E) In the event the selling institution or organization cannot complete a retail sale of a particular vehicle, or if the vehicle cannot be transferred as a wholesale transaction to a dealer licensed under this code, the vehicle shall be returned to the nonselling institution or organization and the written agreement revised to reflect that return. Under no circumstances may a selling institution or organization transfer or donate the vehicle to a third party that is excluded from the definition of a dealer under this section.

(3) An institution or organization described in this subdivision shall retain all records to be retained pursuant to Section 1660.

(p) Any motor club, as defined in Section 12142 of the Insurance Code, that does not arrange or negotiate individual motor vehicle purchase transactions on behalf of its members but refers members to a new motor vehicle dealer for the purchase of a new motor vehicle and does not receive a fee from the dealer contingent upon the sale of the vehicle.

### **“Distributor”**

296. A “distributor” is any person other than a manufacturer who sells or distributes new vehicles subject to registration under this code, new trailers subject to identification pursuant to

Section 5014.1, or new off-highway motorcycles subject to identification under this code, to dealers in this state and maintains representatives for the purpose of contacting dealers or prospective dealers in this state.

#### **“Distributor Branch”**

297. A “distributor branch” is an office maintained by a distributor for the sale of new vehicles or new trailers subject to identification pursuant to Section 5014.1 to dealers or for directing or supervising, in whole or in part, the distributor’s representatives.

#### **“Established Place of Business”**

320. “Established place of business” is a place actually occupied either continuously or at regular periods by any of the following:

(a) A dealer, remanufacturer, remanufacturer branch, manufacturer, manufacturer branch, distributor, distributor branch, automobile driving school, or traffic violator school where the books and records pertinent to the type of business being conducted are kept.

(b) An automobile dismantler where the books and records pertinent to the type of business being conducted are kept. A place of business of an automobile dismantler which qualified as an “established place of business” before September 17, 1970, is an “established place of business” as defined in this section.

(c) A registration service where the books and records pertinent to the type of business being conducted are kept.

#### **“Franchise”**

331. (a) A “franchise” is a written agreement between two or more persons having all of the following conditions:

(1) A commercial relationship of definite duration or continuing indefinite duration.

(2) The franchisee is granted the right to offer for sale or lease, or to sell or lease at retail new motor vehicles or new trailers subject to identification pursuant to Section 5014.1 manufactured or distributed by the franchisor or the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities.

(3) The franchisee constitutes a component of the franchisor’s distribution system.

(4) The operation of the franchisee’s business is substantially associated with the franchisor’s trademark, trade name, advertising, or other commercial symbol designating the franchisor.

(5) The operation of a portion of the franchisee’s business is substantially reliant on the franchisor for a continued supply of new vehicles, parts, or accessories.

(b) The term “franchise” does not include an agreement entered into by a manufacturer or distributor and a person where all the following apply:

(1) The person is authorized to perform warranty repairs and service on vehicles manufactured or distributed by the manufacturer or distributor.

(2) The person is not a new motor vehicle dealer franchisee of the manufacturer or distributor.

(3) The person’s repair and service facility is not located within the relevant market area of a new motor vehicle dealer franchisee of the manufacturer or distributor.

**“Franchisee”**

331.1. A “franchisee” is any person who, pursuant to a franchise, receives new motor vehicles subject to registration under this code or new off-highway motorcycles, as defined in Section 436, or new trailers subject to identification pursuant to Section 5014.1 from the franchisor and who offers for sale or lease, or sells or leases the vehicles at retail or is granted the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities.

**“Franchisor”**

331.2. A “franchisor” is any person who manufactures, assembles, or distributes new motor vehicles subject to registration under this code or new off-highway motorcycles, as defined in Section 436, or new trailers subject to identification pursuant to Section 5014.1 and who grants a franchise.

**“Low-Speed Vehicles”**

385.5 A “low-speed vehicle” is a motor vehicle, other than a motor truck, having four wheels on the ground and an unladen weight of 1,800 pounds or less, that is capable of propelling itself at a minimum speed of 20 miles per hour and a maximum speed of 25 miles per hour, on a paved level surface. For the purposes of this section, a “low-speed vehicle” is not a golf cart, except when operated pursuant to Section 21115 or 21115.1.”

**“Manufacturer Branch”**

389. A “manufacturer branch” is an office maintained by a manufacturer for the sale of new vehicles to dealers or for directing or supervising in whole or in part the manufacturer’s representatives.

**“Motorcycle”**

400. (a) A “motorcycle” is any motor vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and weighing less than 1,500 pounds.

(b) A motor vehicle that has four wheels in contact with the ground, two of which are a functional part of a sidecar, is a motorcycle if the vehicle otherwise comes within the definition of subdivision (a).

(c) A motor vehicle that is electrically powered, has a maximum speed of 45 miles per hour, and weighs less than 2,500 pounds, is a motorcycle if the vehicle otherwise comes within the definition of subdivision (a).

(d) A farm tractor is not a motorcycle.

(e) A three-wheeled motor vehicle that otherwise meets the requirements of subdivision (a), has a partially or completely enclosed seating area for the driver and passenger, is used by local public agencies for the enforcement of parking control provisions, and is operated at slow speeds on public streets, is not a motorcycle. However, a motor vehicle described in this subdivision shall comply with the applicable sections of this code imposing equipment installation requirements on motorcycles.

**“Motor Vehicle”**

415. (a) A “motor vehicle” is a vehicle that is self-propelled.

(b) “Motor vehicle” does not include a self-propelled wheelchair, invalid tricycle, or motorized quadricycle when operated by a person who, by reason of physical disability, is otherwise unable to move about as a pedestrian.

(c) For purposes of Chapter 6 (commencing with Section 3000) of Division 2, “motor vehicle” includes a recreational vehicle as that term is defined in subdivision (a) of Section 18010 of the Health and Safety Code, but does not include a truck camper.

**“New Motor Vehicle Dealer”**

426. “New motor vehicle dealer” is a dealer, as defined in Section 285, who, in addition to the requirements of that section, either acquires for resale new and unregistered motor vehicles from manufacturers or distributors of those motor vehicles or acquires for resale new and unregistered off-highway motorcycles from manufacturers or distributors of the vehicles. No distinction shall be made, nor any different construction be given to the definition of “new motor vehicle dealer” and “dealer” except for the application of the provisions of Chapter 6 (commencing with Section 3000) of Division 2 and Section 11704.5. Sections 3001 and 3003 do not, however, apply to a dealer who deals exclusively in motorcycles or recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code.

**“New Vehicle”**

430. A “new vehicle” is a vehicle constructed entirely from new parts that has never been the subject of a retail sale, or registered with the department, or registered with the appropriate agency or authority of any other state, District of Columbia, territory or possession of the United States, or foreign state, province, or country.

**“Off-Highway Motorcycle”**

436. An “off-highway motorcycle” means a motorcycle or motor-driven cycle which is subject to identification under this code.

**“Person”**

470. “Person” includes a natural person, firm, copartnership, association, limited liability company, or corporation.

**“Relevant Market Area”**

507. The “relevant market area” is any area within a radius of 10 miles from the site of a potential new dealership.

**“Representative”**

512. A “representative” is any person regularly employed by a manufacturer or distributor for the purpose of negotiating or promoting the sale of the manufacturer’s or distributor’s vehicles to their franchisees or for regularly supervising or contacting franchisees or prospective franchisees in this state for any purpose.

**“Retail Sale”**

520. A “retail sale” is a sale of goods to a person for the purpose of consumption and use, and not for resale to others, including, but not limited to, an arrangement where a motor vehicle is consigned to a dealer for sale.

**“Used Vehicle”**

665. A “used vehicle” is a vehicle that has been sold, or has been registered with the department, or has been sold and operated upon the highways, or has been registered with the appropriate agency of authority, of any other state, District of Columbia, territory or possession of the United States or foreign state, province or country, or unregistered vehicles regularly used or operated as demonstrators in the sales work of a dealer or unregistered vehicles regularly used or operated by a manufacturer in the sales or distribution work of such manufacturer. The word “sold” does not include or extend to: (1) any sale made by a manufacturer or a distributor to a dealer, (2) any sale by a new motor vehicle dealer franchised to sell a particular line-make to another new motor vehicle dealer franchised to sell the same line-make, or (3) any sale by a dealer to another dealer licensed under this code involving a mobilehome, as defined in Section 396, a recreational vehicle, as defined in Section 18010.5 of the Health and Safety Code, a commercial coach, as defined in Section 18012 of the Health and Safety Code, an off-highway motor vehicle subject to identification, as defined in Section 38012, or a commercial vehicle, as defined in Section 260.

**“Vehicle Manufacturer”**

672. (a) “Vehicle manufacturer” is any person who produces from raw materials or new basic components a vehicle of a type subject to registration under this code, off-highway motorcycles subject to identification under this code, or trailers subject to identification pursuant to Section 5014.1, or who permanently alters, for purposes of retail sales, new commercial vehicles by converting the vehicles into housecars that display the insignia of approval required by Section 18056 of the Health and Safety Code and any regulations issued pursuant thereto by the Department of Housing and Community Development. As used in this section, “permanently alters” does not include the permanent attachment of a camper to a vehicle.

(b) A vehicle manufacturer who produces a vehicle of a type subject to registration that consists of used or reconditioned parts, for the purposes of the code, is a remanufacturer, as defined in Section 507.8.

(c) Unless a vehicle manufacturer either grants franchises to franchisees in this state, or issues vehicle warranties directly to franchisees in this state or consumers in this state, the manufacturer shall have an established place of business or a representative in this state.

(d) The scope and application of this section are limited to Division 2 (commencing with Section 1500) and Division 5 (commencing with Section 11100).

**“Vehicle Salesperson”; Exclusions**

675. (a) “Vehicle salesperson” is a person not otherwise expressly excluded by this section, who does one or a combination of the following:

(1) Is employed as a salesperson by a dealer, as defined in Section 285, or who, under any form of contract, agreement, or arrangement with a dealer, for commission, money, profit, or other thing of value, sells, exchanges, buys, or offers for sale, negotiates, or attempts to negotiate,

a sale, or exchange of an interest in a vehicle required to be registered under this code.

(2) Induces or attempts to induce any person to buy or exchange an interest in a vehicle required to be registered, and who receives or expects to receive a commission, money, brokerage fees, profit, or any other thing of value, from either the seller or purchaser of the vehicle.

(3) Exercises managerial control over the business of a licensed vehicle dealer or who supervises vehicle salespersons employed by a licensed dealer, whether compensated by salary or commission, including, but not limited to, any person who is employed by the dealer as a general manager, assistant general manager, or sales manager, or any employee of a licensed vehicle dealer who negotiates with or induces a customer to enter into a security agreement or purchase agreement or purchase order for the sale of a vehicle on behalf of the licensed vehicle dealer.

(b) The term “vehicle salesperson” does not include any of the following:

(1) Representatives of insurance companies, finance companies, or public officials, who in the regular course of business, are required to dispose of or sell vehicles under a contractual right or obligation of the employer, or in the performance of an official duty, or under the authority of any court of law, if the sale is for the purpose of saving the seller from any loss or pursuant to the authority of a court of competent jurisdiction.

(2) Persons who are licensed as a manufacturer, remanufacturer, transporter, distributor, or representative.

(3) Persons exclusively employed in a bona fide business of exporting vehicles, or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States.

(4) Persons not engaged in the purchase or sale of vehicles as a business, disposing of vehicles acquired for their own use, or for use in their business when the vehicles have been so acquired and used in good faith, and not for the purpose of avoiding the provisions of this code.

(5) Persons regularly employed as salespersons by persons who are engaged in a business involving the purchase, sale, or exchange of boat trailers.

(6) Persons regularly employed as salespersons by persons who are engaged in a business activity which does not involve the purchase, sale, or exchange of vehicles, except incidentally in connection with the purchase, sale, or exchange of vehicles of a type not subject to registration under this code, boat trailers, or midget autos or racers advertised as being built exclusively for use by children.

(7) Persons licensed as a vehicle dealer under this code doing business as a sole ownership or member of a partnership or a stockholder and director of a corporation or a member and manager of a limited liability company licensed as a vehicle dealer under this code. However, those persons shall engage in the activities of a salesperson, as defined in this section, exclusively on behalf of the sole ownership or partnership or corporation or limited liability company in which they own an interest or stock, and those persons owning stock shall be directors of the corporation; otherwise, they are vehicle salespersons and subject to Article 2 (commencing with Section 11800) of Chapter 4 of Division 5.

(8) Persons regularly employed as salespersons by a vehicle dealer authorized to do business in California under Section 11700.1 of the Vehicle Code.

## ***DIVISION 2. ADMINISTRATION***

### ***CHAPTER 6. NEW MOTOR VEHICLE BOARD***

#### ***Article 1. Organization of Board***

##### **Creation of Board**

3000. There is in the Department of Motor Vehicles a New Motor Vehicle Board, which consists of nine members.

##### **Qualifications of Board Members**

3001. (a) Four of the appointive members of the board shall be new motor vehicle dealers as defined in Section 426 who have engaged for a period of not less than five years preceding their appointment in activities regulated by Article 1 (commencing with Section 11700) of Chapter 4 of Division 5. These members shall be appointed by the Governor.

(b) Each of the five remaining appointive members shall be a public member who is not a licentiate under Article 1 (commencing with Section 11700) or 2 (commencing with Section 11800) of Chapter 4 of Division 5 or an employee of such licentiate at the time of appointment and one of these five appointive members shall have been admitted to practice law in the state for at least 10 years immediately preceding his or her appointment. One public member shall be appointed by the Senate Committee on Rules, one by the Speaker of the Assembly, and three by the Governor.

(c) Each member shall be of good moral character.

(d) This section does not apply to a dealer who deals exclusively in motorcycles or recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code.

##### **Effective Date of Appointments**

3002. The appointments of the appointive members shall be made effective as of the effective date of this article.

##### **Terms of Office: Vacancies**

3003. (a) Each appointive member of the board shall be appointed for a term of four years and shall hold office until the appointment and qualification of his or her successor or until one year has elapsed since the expiration of the time for which he or she was appointed, whichever occurs first.

(b) The terms of the members of the board first appointed shall expire as follows: one public member and one new motor vehicle dealer member, January 15, 1969; two public members and one new motor vehicle dealer member, January 15, 1970; two public members and two new motor vehicle dealer members, January 15, 1971. The terms shall thereupon expire in the same relative order.

(c) Vacancies occurring shall be filled by appointment for the unexpired term.

This section does not apply to a dealer who deals exclusively in motorcycles or recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code.



**Oath**

3004. Members of the board shall take an oath of office as provided the Constitution and the Government Code.

**Removal from Office**

3005. The appointive authority has the power to remove from office at any time, any member of the board appointed by such appointing authority for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct. Nothing in this section shall be construed as a limitation or restriction on the power of the appointing authority, conferred by any other provision of law, to remove any member of the board.

**President of Board**

3006. The board shall organize and elect a president from among its members for a term of one year at the first meeting of each year. The newly elected president shall assume his duties at the conclusion of the meeting at which he was elected. Reelection to office during membership is unrestricted.

**Frequency of Meetings**

3007. The board shall meet at least twice during each calendar year.

Special meetings may be called at any time by the president or by any five members of the board upon notice for such time and in such manner as the board may provide.

**Public Meetings**

3008. (a) All meetings of the board shall be open and public, and all persons shall be permitted to attend any meeting of the board, except that the board may hold executive sessions to deliberate on the decision to be reached upon the evidence introduced in a proceeding conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) At all meetings of the board, open or executive, involving an appeal from a decision of the Director of Motor Vehicles as hereinafter provided for, the director or his authorized representative may attend, present the position of the department and thereafter shall absent himself from any executive session at the request of any member of the board.

(c) Within the limitations of its powers and authority as herein conferred, and in the event of disagreement between the board and the director regarding the decision to be reached as herein provided, the decision of the board shall be final.

**Quorum**

3010. Five members of the board shall constitute a quorum for the transaction of business, for the performance of any duty or the exercise of any power or authority of the board, except that three members of the board, who are not new motor vehicle dealers, shall constitute a quorum for the purposes of Article 4 (commencing with Section 3060) and the consideration of a petition pursuant to subdivision (c) of Section 3050 that involves a dispute between a franchisee and franchisor.

**Effect of Vacancy on Board**

3011. A vacancy on the board shall not impair the power of the remaining members to perform

all duties and exercise all powers of the board, providing the members remaining constitute a quorum.

#### **Per Diem; Reimbursement for Expenses**

3012. Each member of the board shall receive a per diem of one hundred dollars (\$100) for each day actually spent in the discharge of official duties, and he shall be reimbursed for his traveling and other expenses necessarily incurred in the performance of his duties, which per diem and reimbursement shall be wholly defrayed from funds that shall be provided in the annual budget of the department.

#### **Seal**

3013. The board shall adopt a seal and such other device as the members may desire thereon, by which they shall authenticate all papers and documents under their control.

Copies of all records and papers in the board's office shall be received in evidence in all cases when certified under the hand and seal of the board, equally and with like effect as the originals.

#### **Assistance from Department**

3014. The department shall provide the board with the services, as Executive Director, of a qualified, trained person, who shall, subject to civil service requirements, devote as much time as may be necessary to discharge the functions of the board as herein provided. In addition, the board may appoint an assistant Executive Director, who shall be exempt from civil service. The department, in addition, shall provide the board with the necessary personnel, office space, equipment, supplies, and services which, in the opinion of the board, may be necessary to administer this chapter. However, the board may contract with the department or another state agency for office space, equipment, supplies, and services, as determined by the board to be appropriate, for the administration of this chapter.

#### **Offices**

3015. In addition to the office of the Executive Director in Sacramento, the department shall, as the need therefor occurs, secure adequate rooms for the meetings of the board in Los Angeles, San Francisco, Sacramento, or such other locations in the state as may be required in the discretion of the board, to administer this chapter.

#### **Funding Through Imposition of Fees**

3016. ((a) New motor vehicle dealers and other licensees under the jurisdiction of the board shall be charged fees sufficient to fully fund the activities of the board other than those conducted pursuant to Section 472.5 of the Business and Professions Code. The board may recover the direct cost of the activities required by Section 472.5 of the Business and Professions Code by charging the Department of Consumer Affairs a fee which shall be paid by the Department of Consumer Affairs with funds appropriated from the Certification Account in the Consumer Affairs Fund. All fees shall be deposited, and held separate from other moneys, in the Motor Vehicle Account in the State Transportation Fund, and shall not be transferred to the State Highway Account pursuant to Section 42273.

(b) The fees shall be available, when appropriated, exclusively to fund the activities of the board. If, at the conclusion of any fiscal year, the amount of fees collected exceeds the amount of expenditures for this purpose during the fiscal year, the surplus shall be carried over into the succeeding fiscal year.

## ***Article 2. Powers and Duties of Board***

### **Duties**

3050. The board shall do all of the following:

(a) Adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code governing those matters that are specifically committed to its jurisdiction.

(b) Hear and determine, within the limitations and in accordance with the procedure provided, an appeal presented by an applicant for, or holder of, a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative when the applicant or licensee submits an appeal provided for in this chapter from a decision arising out of the department.

(c) Consider any matter concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative pursuant to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter considered by the board pursuant to this subdivision that involves a dispute between a franchisee and franchisor. After that consideration, the board may do any one or any combination of the following:

(1) Direct the department to conduct investigation of matters that the board deems reasonable, and make a written report on the results of the investigation to the board within the time specified by the board.

(2) Undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor branch, or representative.

(3) Order the department to exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as that license is required under Chapter 4 (commencing with Section 11700) of Division 5.

(d) Hear and decide, within the limitations and in accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060, 3062, 3064, 3065, or 3065.1. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise.

(e) Notwithstanding subdivisions (c) and (d), the courts have jurisdiction over all common law and statutory claims originally cognizable in the courts. For those claims, a party may initiate an action directly in any court of competent jurisdiction.

**Discovery**

3050.1 (a) In any proceeding, hearing, or in the discharge of any duties imposed under this chapter, the board, its executive director, or an administrative law judge designated by the board may administer oaths, take depositions, certify to official acts, and issue subpoenas to compel attendance of witnesses and the production of books, records, papers, and other documents in any part of the state.

(b) For purposes of discovery, the board or its executive director may, if deemed appropriate and proper under the circumstances, authorize the parties to engage in those discovery procedures as are provided for in civil actions in Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure, excepting the provisions of Section 2030 of that code. Discovery shall be completed no later than 15 days prior to the commencement of the proceeding or hearing before the board. This subdivision shall apply only to those proceedings or hearings involving a petition or protest filed pursuant to subdivision (c) or (d) of Section 3050. The board, its executive director, or an administrative law judge designated by the board may issue subpoenas to compel attendance at depositions of persons having knowledge of the acts, omissions or events which are the basis for the proceedings, as well as the production of books, records, papers and other documents.

**Enforcement of Discovery Procedures**

3050.2. (a) Obedience to subpoenas issued to compel attendance of witnesses, or the production of books, records, papers, and other documents at the proceeding or hearing, may be enforced by application to the superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Compliance with such discovery procedures authorized pursuant to subdivision (b) of Section 3050.1 may be enforced by application to the executive director of the board. The executive director may, at the direction of the board, upon a showing of failure to comply with authorized discovery without substantial justification for that failure, dismiss the protest or petition or suspend the proceedings pending compliance. The executive director may, at the direction of the board, upon a failure to comply with authorized discovery without substantial justification for that failure, require payment of costs incurred by the board, as well as attorney's fees and costs of the party who successfully makes or opposes a motion to compel enforcement of discovery. Nothing in this section precludes the executive director from making application to the superior court to enforce obedience to subpoenas or compliance with other discovery procedures authorized pursuant to subdivision (b) of Section 3050.1

**Witness Fees and the Mileage Allowance**

3050.3. Each witness, other than an officer or employee of the state or of a political subdivision of the state, who appears by order of the board or its executive director, shall receive for his attendance the same fees and all witnesses shall receive the same mileage allowed by law to witnesses in civil cases. The amount shall be paid by the party at whose request the witness is subpoenaed. The mileage and fees, if any, of a witness subpoenaed by the board or its executive director, but not at the request of a party, shall be paid from the funds provided for the use of the board in the same manner that other expenses of the board are paid.

**Mandatory Settlement Conference; Effect of Failure to Appear**

3050.4. In any protest or petition before the board, the board, its executive director, or an administrative law judge designated by the board or its executive director, may order a mandatory settlement conference. The failure of a party to appear, to be prepared, or to have authority to settle the matter may result in any or all of the following:

(a) The board, its executive director, or an administrative law judge designated by the board or its executive director, may suspend all proceedings before the board in the matter until compliance.

(b) The board, its executive director, or an administrative law judge designated by the board or its executive director, may dismiss the proceedings or any part thereof before the board with or without prejudice.

(c) The board, its executive director, or an administrative law judge designated by the board or its executive director, may require all the board's costs to be paid by the party at fault.

(d) The board, its executive director, or an administrative law judge designated by the board or its executive director, may deem that the party at fault has abandoned the matter.

**Fees for Filing Appeal, Protest or Petition**

3050.5. Pursuant to Section 3016, the board shall establish a fee for the initial filing by any party in regard to any appeal, protest, or petition filed pursuant to this chapter.

**Assessment of Costs for Continuance**

3050.6. The board or its executive director may, in the event of a granting of a continuance of a scheduled matter, assess costs of the board upon the party receiving the continuance.

**Proposed Stipulated Decision and Order; Adoption**

3050.7 (a) The board may adopt stipulated decisions and orders, without a hearing pursuant to Section 3066, to resolve one or more issues raised by a protest or petition filed with the board. Whenever the parties to any protest or petition submit a proposed stipulated decision and proposed order of the board, a copy of the proposed stipulated decision and order shall be transmitted by the executive director of the board to each member of the board. The proposed stipulated decision and order shall be deemed to be adopted by the board unless any member of the board notifies the executive director of the board of an objection thereto within 10 days after that board member has received a copy of the proposed stipulated decision and order.

(b) If the board adopts a stipulated decision and order to resolve a protest filed pursuant to Section 3060 in which the parties stipulate that good cause exists for the termination of the franchise of the protestant, and the order provides for a conditional or unconditional termination of the franchise of the protestant, subdivision (b) of Section 3060, which requires a hearing to determine whether good cause exists for the termination of the franchise, is inapplicable to the proceedings. If the stipulated decision and order provides for an unconditional termination of the franchise, the franchise may be terminated without any further proceedings by the board. If the stipulated decision and order provides for the termination of the franchise, conditioned upon the failure of any party to comply with any specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the conditions have not been met. If the stipulated decision and order provides for the termination of the franchise conditioned upon the occurrence of any specified conditions, the franchise may be

terminated upon a determination, according to the terms of the stipulated decision and order, that the stipulated conditions have occurred.

### **Applicability of Provisions**

3051. This chapter does not apply to any person licensed as a transporter under Article 1 (commencing with Section 11700) or as a salesperson under Article 2 (commencing with Section 11800) of Chapter 4 of Division 5, or to any licensee who is not a new motor vehicle dealer, motor vehicle manufacturer, manufacturer branch, new motor vehicle distributor, distributor branch, or representative. This chapter does not apply to transactions involving "mobilehomes," as defined in Section 18008 of the Health and Safety Code, "recreational vehicles," as defined in subdivision (b) of Section 18010 of the Health and Safety Code, truck campers, "commercial coaches," as defined in Section 18001.8 of the Health and Safety Code, or off-highway motor vehicles subject to identification, as defined in Section 38012, except off-highway motorcycles, as defined in Section 436, and all-terrain vehicles, as defined in Section 111. Except as otherwise provided in this chapter, this chapter applies to a new motor vehicle dealer, a dealer of new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, except a dealer who deals exclusively in truck campers, a vehicle manufacturer as defined in Section 672, a manufacturer branch as defined in Section 389, a distributor as defined in Section 296, a distributor branch as defined in Section 297, a representative as defined in Section 512, or an applicant therefor.

### ***Article 3. Appeals From Decisions of the Department***

#### **Filing and Content of Appeal; Effect of Filing on Decisions**

3052. (a) On or before the 10<sup>th</sup> day after the last day on which reconsideration of a final decision of the department can be ordered, the respondent may file an appeal with the executive director of the board. The appeal shall be in writing and shall state the grounds therefor. A copy of the appeal shall be mailed by the appellant to the department which shall thereafter be considered in all respects as a party to the appeal. The right to appeal is not affected by failure to seek reconsideration before the department.

(b) An appeal is considered to be filed on the date it is received in the office of the executive director of the board, except that an appeal mailed to the executive director by means of registered mail is considered to be filed with the executive director on the postmark date.

(c) The appeal shall be accompanied by evidence that the appellant has requested the administrative record of the department and advanced the cost of preparation of that record. The complete administrative record includes the pleadings, all notices and orders issued by the department, any proposed decision by an administrative law judge, the exhibits admitted or rejected, the written evidence and any other papers in the case. All or those parts of the administrative record requested by the appellant may be filed with the appeal together with the appellant's points and authorities. If the board orders the filing of additional parts of the administrative record, the board may order prior payment by the appellant of the cost of providing those additional parts.

(d) Except as provided in subdivisions (e) and (f), no decision of the department shall become effective during the period an appeal may be filed, and the filing of an appeal shall stay the decision of the department until a final order is made by the board.

(e) When a decision has ordered revocation of a dealer's license, the department may, on or before the last day upon which an appeal may be filed with the board, petition the board to order the decision of the department into effect.

(f) With respect to the department's petition filed pursuant to subdivision (e), the department shall have the burden of proof. The board shall act upon the petition within 14 days or prior to the effective date of the department's decision, whichever is later. The board may order oral argument on the petition before the board. Oral argument by telephone conference call with a quorum of the board members present, either in person or by telephone, is permitted.

### **Determination of Appeal**

3053. The board shall determine the appeal upon the administrative record of the department, any evidence adduced at any hearing of the board, and upon any briefs filed by the parties. If any party to the appeal requests the right to appear before the board, the board shall set a time and place for such hearing, the production of any relevant evidence and argument.

### **Grounds to Reverse or Amend Decision**

3054. The board shall have the power to reverse or amend the decision of the department if it determines that any of the following exist:

- (a) The department has proceeded without or in excess of its jurisdiction.
- (b) The department has proceeded in a manner contrary to the law.
- (c) The decision is not supported by the findings.
- (d) The findings are not supported by the weight of the evidence in the light of the whole record reviewed in its entirety, including any and all relevant evidence adduced at any hearing of the board.
- (e) There is relevant evidence, which in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing.
- (f) The determination or penalty, as provided in the decision of the department is not commensurate with the findings.

### **Power to Reverse or Amend Penalty**

3055. The board shall also have the power to amend, modify, or reverse the penalty imposed by the department.

### **Reconsideration on Reversal of Decision**

3056. When the order reverses the decision of the department, the board may direct the reconsideration of the matter in the light of its order and may direct the department to take such further action as is specially enjoined upon it by law. In all cases the board shall enter its order within 60 days after the filing of the appeal, except in the case of unavoidable delay in supplying the administrative record, in which event the board shall make its final order within 60 days after receipt thereof.

### **Effective Date of Orders of Board: Final Orders**

3057. The board shall fix an effective date for its orders not more than 30 days from the day the order is served upon the parties or remand the case to the department for fixing an effective date. A final order of the board shall be in writing and copies thereof shall be delivered to the parties

personally or sent them by registered mail. The order shall be final upon its delivery or mailing and no reconsideration or rehearing shall be permitted.

### **Judicial Review**

3058. Either party may seek judicial review of final orders of the board. Time for filing an action for such review shall not be more than 30 days from the date on which the final order of the board is delivered to the parties personally or is sent them by registered mail.

### ***Article 4. Hearings on Franchise Modification, Replacement, Termination, Refusal to Continue, Delivery and Preparation Obligations, and Warranty Reimbursement***

#### **Termination of Franchise**

3060. (a) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, no franchisor shall terminate or refuse to continue any existing franchise unless all of the following conditions are met:

(1) The franchisee and the board have received written notice from the franchisor as follows:

- (A) Sixty days before the effective date thereof setting forth the specific grounds for termination or refusal to continue.
- (B) Fifteen days before the effective date thereof setting forth the specific grounds with respect to any of the following:
  - (i) Transfer of any ownership or interest in the franchise without the consent of the franchisor, which consent shall not be unreasonably withheld.
  - (ii) Misrepresentation by the franchisee in applying for the franchise.
  - (iii) Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law.
  - (iv) Any unfair business practice after written warning thereof.
  - (v) Failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the motor vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of the motor vehicle dealer or by order of the department.
- (c) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, one of the following statements, whichever is applicable:

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

(ii) To be inserted when a 15-day notice of termination is given:



"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

(2) Except as provided in Section 3050.7, the board finds that there is good cause for termination or refusal to continue, following a hearing called pursuant to Section 3066. The franchisee may file a protest with the board within 30 days after receiving a 60-day notice, satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, or within 10 days after receiving a 15-day notice, satisfying the requirements of this section, or within 10 days after the end of any appeal procedure provided by the franchisor. When a protest is filed, the board shall advise the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not terminate or refuse to continue until the board makes its findings.

(3) The franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has elapsed.

(b) (1) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, no franchisor shall modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment, unless the franchisor has first given the board and each affected franchisee written notice thereof at least 60 days in advance of the modification or replacement. Within 30 days of receipt of the notice, satisfying the requirement of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, a franchisee may file a protest with the board and the modification or replacement does not become effective until there is a finding by the board that there is good cause for the modification or replacement. If, however, a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the protest by the board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the franchiser or your protest rights will be waived."

### **Good Cause in Determination Affecting Existing Franchise**

3061. In determining whether good cause has been established for modifying, replacing, terminating, or refusing to continue a franchise, the board shall take into consideration the

existing circumstances, including, but not limited to, all of the following:

(a) Amount of business transacted by the franchisee, as compared to the business available to the franchisee.

(b) Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.

(c) Permanency of the investment.

(d) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.

(e) Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public.

(f) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee.

(g) Extent of franchisee's failure to comply with the terms of the franchise.

### **Establishing or Relocating Dealerships**

3062. (a) (1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same line-make is then represented, or seeks to relocate an existing motor vehicle dealership, the franchisor shall, in writing, first notify the board and each franchisee in that line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership within or into that market area. Within 20 days of receiving the notice, satisfying the requirements of this section, or within 20 days after the end of any appeal procedure provided by the franchisor, any franchisee required to be given the notice may file with the board a protest to the establishing or relocating of the dealership. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant an additional 10 days to file the protest. When such a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor shall not establish or relocate the proposed dealership until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(2) If a franchisor seeks to enter into a franchise that authorizes a satellite warranty facility to be established at, or relocated to, a proposed location which is within two miles of any dealership of the same line-make, the franchisor shall first give notice in writing of the franchisor's intention to establish or relocate a satellite warranty facility at the proposed location to the board and each franchisee operating a dealership of the same line-make within two miles of the proposed location. Within 20 days of receiving the notice satisfying the requirements of this section, or within 20 days after the end of any appeal procedure provided by the franchisor, any franchisee required to be given the notice may file with the board a protest to the establishing or relocating of the satellite warranty facility. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant an additional 10 days to file the protest. When such a protest

is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor shall not establish or relocate the proposed satellite warranty facility until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the satellite warranty facility. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(3) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If, within this time, you file with the board a request for additional time to file a protest, the board or its secretary, upon a showing of good cause, may grant you an additional 10 days to file the protest."

(b) Subdivision (a) does not apply to either of the following:

(1) The relocation of an existing dealership to any location that is both within the same city as, and is within one mile from, the existing dealership location.

(2) The establishment at any location that is both within the same city as, and is within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days.

(c) Subdivision (a) does not apply to any display of vehicles at a fair, exposition, or similar exhibit if no actual sales are made at the event and the display does not exceed 30 days. This subdivision shall not be construed to prohibit a new vehicle dealer from establishing a branch office for the purpose of selling vehicles at the fair, exposition, or similar exhibit, even though that the event is sponsored by a financial institution, as defined in Section 31041 of the Financial Code or by a financial institution and a licensed dealer. The establishment of these branch offices, however, shall be in accordance with subdivision (a) where applicable.

(d) For the purposes of this section, the reopening of a dealership that has not been in operation for one year or more shall be deemed the establishment of an additional motor vehicle dealership.

(e) As used in this section, the following definitions apply:

(1) "Motor vehicle dealership" or "dealership" means any authorized facility at which a franchisee offers for sale or lease, displays for sale or lease, or sells or leases new motor vehicles.

(2) "Satellite warranty facility" means any facility operated by a franchisee where authorized warranty repairs and service are performed and the offer for sale or lease, the display for sale or lease, or the sale or lease of new motor vehicles is not authorized to take place.

### **Good Cause in Determination as to Additional Franchise**

3063. In determining whether good cause has been established for not entering into or relocating an additional franchise for the same line-make, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

- (a) Permanency of the investment.
- (b) Effect on the retail motor vehicle business and the consuming public in the relevant market area.
- (c) Whether it is injurious to the public welfare for an additional franchise to be established.
- (d) Whether the franchisees of the same line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel.
- (e) Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.

### **Delivery and Preparation Obligations**

3064. (a) Every franchisor shall specify to its franchisees the delivery and preparation obligations of such franchisees prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations, which shall constitute the franchisee's only responsibility for product liability between the franchisee and the franchisor but which shall not in any way affect the franchisee's responsibility for product liability between the purchaser and either the franchisee or the franchisor, and a schedule of compensation to be paid franchisees for the work and services they shall be required to perform in connection with such delivery and preparation obligations shall be filed with the board by franchisors, and shall constitute the compensation as set forth on such schedule. The schedule of compensation shall be reasonable, with the reasonableness thereof being subject to the approval of the board, providing a franchisee files a notice of protest with the board. In determining the reasonableness of the schedules, the board shall consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate.

(b) Upon delivery of the vehicle, the franchisee shall give a copy of the delivery and preparation obligations to the purchaser and a written certification that he has fulfilled these obligations.

### **Warranty Reimbursement**

3065. (a) Every franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of repair and servicing and shall file a copy of its warranty reimbursement schedule or formula with the board. The warranty reimbursement schedule or formula shall be reasonable with respect to the time and compensation allowed the franchisee for the warranty work and all other conditions of the obligation. The reasonableness of the warranty reimbursement schedule or formula shall be determined by the board if a franchisee files a notice of protest with the board.

(b) In determining the adequacy and fairness of the compensation, the franchisees effective labor rate charged to its various retail customers may be considered together with other relevant criteria.

(c) If any franchisor disallows a franchisees claim for a defective part, alleging that the part, in fact, is not defective, the franchisor shall return the part alleged not to be defective to the franchisee at the expense of the franchisor, or the franchisee shall be reimbursed for the

franchisees cost of the part, at the franchisors option.

(d) All such claims made by franchisees pursuant to this section shall be either approved or disapproved within 30 days after their receipt by the franchisor. Any claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30<sup>th</sup> day. When any claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required time period, and each notice shall state the specific grounds upon which the disapproval is based. All claims made by franchisees under this section and Section 3064 for labor and parts shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, shall not constitute a violation of this article.

(e) Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis, and for a period of 12 months after a claim is paid or credit issued. Franchisee claims for warranty compensation shall not be disapproved except for good cause, such as performance of nonwarranty repairs, lack of material documentation, or fraud. Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of the completion of the audit. If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

**Period for Decision on Claims by Franchise for Payment Under Incentive Program; Notification of Disapproval; Appeal; Audits of Franchise Records**

3065.1. (a) All claims made by a franchisee for payment under the terms of a franchisor incentive program shall be either approved or disapproved within 30 days after receipt by the franchisor. When any claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. Any claim not specifically disapproved in writing within 30 days from receipt shall be deemed approved on the 30<sup>th</sup> day. Following the disapproval of a claim, a franchisee shall have one year from receipt of the notice of disapproval in which to appeal the disapproval to the franchisor and file a protest with the board. All claims made by franchisees under this section shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article.

(b) Audits of franchisee incentive records may be conducted by the franchisor on a reasonable basis, and for a period of 18 months after a claim is paid or credit issued. Franchisee claims for incentive program compensation shall not be disapproved except for good cause, such as ineligibility under the terms of the incentive program, lack of material documentation, or fraud. Any chargeback to a franchisee for incentive program compensation shall be made within 90 days of the completion of the audit. If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

**Hearings on Protests**

3066. (a) Upon receiving a notice of protest pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076, the board shall fix a time within 60 days of the order,

and place of hearing, and shall send by registered mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the board of protests and decisions of the board. Except in a case involving a franchisee who deals exclusively in motorcycles, the board or its executive director may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but the hearing may not be rescheduled more than 90 days after the board's initial order. For the purpose of accelerating or postponing a hearing date, "good cause" includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The board or an administrative law judge designated by the board shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In a hearing on a protest filed pursuant to Section 3060, 3062, 3070, or 3072, the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the burden of proof to establish that there is good cause not to enter into a franchise establishing or relocating an additional motor vehicle dealership.

(c) In a hearing on a protest alleging a violation of, or filed pursuant to, Section 3064, 3065, 3065.1, 3074, 3075, or 3076, the franchisee shall have the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor where that issue is material to a protest filed pursuant to Section 3065, 3065.1, 3075, or 3076.

(d) A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to this article unless all parties to the protest stipulate otherwise.

## **Decision**

3067. (a) The decision of the board shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. Any conditions imposed by the board shall be for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. If the board fails to act within 30 days after such hearing, within 30 days after the board receives a proposed decision where the case is heard before an administrative law judge alone, or within such period as may be necessitated by Section 11517 of the Government Code or as may be mutually agreed upon by the parties, then the proposed action shall be deemed to be approved. Copies of the board's decision shall be delivered to the parties personally or sent to them by registered mail, as well as to all individuals and groups, which have requested notification by the board of protests and decisions by the board. The board's decision shall be final upon its delivery or mailing and no reconsideration or rehearing shall be permitted.

(b) Notwithstanding subdivision (c) of Section 11517 of the Government Code, if a protest is heard by an administrative law judge alone, 10 days after receipt by the board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by

the board as a public record and a copy shall be served by the board on each party and his or her attorney.

### **Judicial Review**

3068. Either party may seek judicial review of final decisions of the board. Time for filing for such review shall not be more than 45 days from the date on which the final order of the board is made public and is delivered to the parties personally or is sent them by registered mail.

### **Application of Article**

3069. The provisions of this article shall be applicable to all franchises existing between dealers and manufacturers, manufacturer branches, distributors and distributor branches at the time of its enactment and to all such future franchises.

### **Inapplicability of §§ 3060 to 3065.1 to franchise authorizing a dealership**

3069.1. Sections 3060 to 3065.1, inclusive, do not apply to a franchise authorizing a dealership, as defined in paragraph (1) of subdivision (e) of Section 3072.

*(Note: This section properly refers to section 3072, subdivision (d). Subdivision (e)(1) was renumbered to subdivision (d)(1) in amendments to the bill on August 18, 2003, and subsequently renumbered to subdivision (d) in the September 2, 2003, amendments)*

## **Article 5. Hearings on Recreational Vehicle Franchise Modification, Replacement, Termination, Refusal to Continue, Establishment, and Relocation, and Consumer Complaints**

### **Conditions for termination, refusal to continue, modification or replacement of franchise of dealer of new recreational vehicles**

3070. (a) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, a franchisor of a dealer of new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, except a dealer who deals exclusively in truck campers, may not terminate or refuse to continue a franchise unless all of the following conditions are met:

(1) The franchisee and the board have received written notice from the franchisor as follows:

(A) Sixty days before the effective date thereof setting forth the specific grounds for termination or refusal to continue.

(B) Fifteen days before the effective date thereof setting forth the specific grounds with respect to any of the following:

(i) Transfer of any ownership or interest in the franchise without the consent of the franchisor, which consent may not be unreasonably withheld.

(ii) Misrepresentation by the franchisee in applying for the franchise.

(iii) Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law.

(iv) Any unfair business practice after written warning thereof.

(v) Failure of the dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith

belief on the part of the franchisor that the recreational vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of the recreational vehicle dealer or by order of the department.

(C) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, one of the following statements, whichever is applicable:

(i) To be inserted when a 60-day notice of termination is given:

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

(ii) To be inserted when a 15-day notice of termination is given:

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

(2) Except as provided in Section 3050.7, the board finds that there is good cause for termination or refusal to continue, following a hearing called pursuant to Section 3066. The franchisee may file a protest with the board within 30 days after receiving a 60-day notice, satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, or within 10 days after receiving a 15-day notice, satisfying the requirements of this section, or within 10 days after the end of any appeal procedure provided by the franchisor. When a protest is filed, the board shall advise the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not terminate or refuse to continue until the board makes its findings.

(3) The franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has elapsed.

(b) (1) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, a franchisor of a dealer of recreational vehicles may not modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment, unless the franchisor has first given the board and each affected franchisee written notice thereof at least 60 days in advance of the modification or replacement. Within 30 days of receipt of a notice satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, a franchisee may file a protest with the board and the modification or replacement does not become effective until there is a finding by the board that there is good cause for the modification or replacement. If, however, a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution



of the protest by the board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the franchiser or your protest rights will be waived."

**Determination of good cause for modifying, replacing, terminating or refusing to continue franchise of dealer of recreational vehicles**

3071. In determining whether good cause has been established for modifying, replacing, terminating, or refusing to continue a franchise of a dealer of new recreational vehicles, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

(a) The amount of business transacted by the franchisee, as compared to the business available to the franchisee.

(b) The investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.

(c) The permanency of the investment.

(d) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.

(e) Whether the franchisee has adequate new recreational vehicle sales and, if required by the franchise, service facilities, equipment, vehicle parts, and qualified service personnel, to reasonably provide for the needs of the consumers of the recreational vehicles handled by the franchisee and has been and is rendering adequate services to the public.

(f) Whether the franchisee fails to fulfill the warranty obligations agreed to be performed by the franchisee in the franchise.

(g) The extent of franchisee's failure to comply with the terms of the franchise.

**Establishment of additional dealership or relocation of dealership by franchisor; Notice, protest and hearing; Exceptions**

3072. (a) (1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same recreational vehicle line-make is then represented, or seeks to relocate an existing motor vehicle dealership, the franchisor shall, in writing, first notify the board and each franchisee in that recreational vehicle line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership within or into that market area. Within 20 days of receiving the notice, satisfying the requirements of this section, or within 20 days after the end of any appeal procedure provided by the franchisor, any

franchisee required to be given the notice may file with the board a protest to establishing or relocating the dealership. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its secretary, upon a showing of good cause, may grant an additional 10 days to file the protest. When a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor shall not establish or relocate the proposed dealership until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If, within this time, you file with the board a request for additional time to file a protest, the board or its secretary, upon a showing of good cause, may grant you an additional 10 days to file the protest."

(b) Subdivision (a) does not apply to any of the following:

(1) The relocation of an existing dealership to any location that is both within the same city as, and within one mile of, the existing dealership location.

(2) The establishment at any location that is both within the same city as, and within one-quarter mile of, the location of a dealership of the same recreational vehicle line-make that has been out of operation for less than 90 days.

(3) A display of vehicles at a fair, exposition, or similar exhibit if no actual sales are made at the event and the display does not exceed 30 days. This paragraph may not be construed to prohibit a new vehicle dealer from establishing a branch office for the purpose of selling vehicles at the fair, exposition, or similar exhibit, even though that event is sponsored by a financial institution, as defined in Section 31041 of the Financial Code, or by a financial institution and a licensed dealer. The establishment of these branch offices, however, shall be in accordance with subdivision (a) where applicable.

(4) An annual show sponsored by a national trade association of recreational vehicle manufacturers that complies with all of the requirements of subdivision (d) of Section 11713.15.

(5) A motor vehicle dealership protesting the location of another dealership with the same recreational vehicle line-make within its relevant market area, if the dealership location subject to the protest was established on or before January 1, 2004.

(c) For the purposes of this section, the reopening of a dealership that has not been in operation for one year or more shall be deemed the establishment of an additional motor vehicle dealership.

(d) For the purposes of this section and Section 3073, a "motor vehicle dealership" or "dealership" is any authorized facility at which a franchisee offers for sale or lease, displays for sale or lease, or sells or leases new recreational vehicles, as defined in subdivision (a) of Section

18010 of the Health Safety Code. A "motor vehicle dealership" or "dealership" does not include a dealer who deals exclusively in truck campers.

**“Recreational vehicle line-make”**

3072.5. For the purposes of this article, a "recreational vehicle line-make" is a group or groups of recreational vehicles defined by the terms of a written agreement that complies with Section 331.

**Determination of good cause for not entering into or relocating additional franchise for same recreational vehicle line-make**

3073. In determining whether good cause has been established for not entering into or relocating an additional franchise for the same recreational vehicle line-make, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

- (a) The permanency of the investment.
- (b) The effect on the retail recreational vehicle business and the consuming public in the relevant market area.
- (c) Whether it is injurious to the public welfare for an additional franchise to be established.
- (d) Whether the franchisees of the same recreational vehicle line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the recreational vehicle line-make in the market area. In making this determination, the board shall consider the adequacy of recreational vehicle sales and, if required by the franchise, service facilities, equipment, supply of vehicle parts, and qualified service personnel.
- (e) Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.

**Delivery and preparation obligations of franchisees prior to delivery of new recreational vehicles to retail buyers; Specification and copy; Schedule of compensation**

3074. (a) A franchisor shall specify to its franchisees the delivery and preparation obligations of the franchisees prior to delivery of new recreational vehicles to retail buyers. A copy of the delivery and preparation obligations, which shall constitute the franchisee's only responsibility for product liability between the franchisee and the franchisor but which shall not in any way affect the franchisee's responsibility for product liability between the purchaser and either the franchisee or the franchisor, and a schedule of compensation to be paid franchisees for the work and services they shall be required to perform in connection with the delivery and preparation obligations shall be filed with the board by franchisors, and shall constitute the compensation as set forth on the schedule. The schedule of compensation shall be reasonable, with the reasonableness thereof being subject to the approval of the board, providing a franchisee files a notice of protest with the board. In determining the reasonableness of the schedules, the board shall consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate.

(b) Upon delivery of the vehicle, the franchisee shall give a copy of the delivery and preparation obligations to the purchaser and a written certification that he or she has fulfilled these obligations.

**Fulfillment of warranty agreements by franchisors; Warranty reimbursement schedule or formula; Claims by franchisees; Audits of franchisee records; Chargebacks**

3075. (a) A franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of repair and servicing and shall file a copy of its warranty reimbursement schedule or formula with the board. The warranty reimbursement schedule or formula shall be reasonable with respect to the time and compensation allowed the franchisee for the warranty work and all other conditions of the obligation. The reasonableness of the warranty reimbursement schedule or formula shall be determined by the board if a franchisee files a notice of protest with the board.

(b) In determining the adequacy and fairness of the compensation, the franchisee's effective labor rate charged to its various retail customers may be considered together with other relevant criteria.

(c) If a franchisor disallows a franchisee's claim for a defective part, alleging that the part, in fact, is not defective, the franchisor shall return the part alleged not to be defective to the franchisee at the expense of the franchisor, or the franchisee shall be reimbursed for the franchisee's cost of the part, at the franchisor's option.

(d) All claims made by franchisees pursuant to this section shall be either approved or disapproved within 30 days after their receipt by the franchisor. A claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day. When a claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and the notice shall state the specific grounds upon which the disapproval is based. All claims made by franchisees under this section and Section 3074 for labor and parts shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article.

(e) Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis, and for a period of 12 months after a claim is paid or credit issued. Franchisee claims for warranty compensation shall not be disapproved except for good cause, including, but not limited to, performance of nonwarranty repairs, lack of material documentation, or fraud. Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of the completion of the audit. If a false claim was submitted by a franchisee with intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

**Claims by franchisee under franchisor incentive program; Audits of franchisee records; Chargebacks**

3076. (a) All claims made by a franchisee for payment under the terms of a franchisor incentive program shall be either approved or disapproved within 30 days after receipt by the franchisor. When a claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. A claim not specifically disapproved in writing within 30 days from receipt shall be deemed approved on the 30th day. Following the disapproval of a claim, a franchisee shall have one year from receipt of the notice of disapproval

in which to appeal the disapproval to the franchisor and file a protest with the board. All claims made by franchisees under this section shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article.

(b) Audits of franchisee incentive records may be conducted by the franchisor on a reasonable basis, and for a period of 18 months after a claim is paid or credit issued. Franchisee claims for incentive program compensation shall not be disapproved except for good cause, such as ineligibility under the terms of the incentive program, lack of material documentation, or fraud. Any chargeback to a franchisee for incentive program compensation shall be made within 90 days of the completion of the audit. If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

#### **One-time additional fee for issuance or renewal of dealer license**

3077. (a) In addition to fees imposed under Sections 3016 and 11723, the department shall impose a one-time additional fee on those dealers subject to this article for the issuance or renewal of a license, in an amount determined by the department to be sufficient to cover the costs incurred by the department and the board in the implementation of this article for the first year, or in an amount sufficient to cover costs of not more than three hundred fifty thousand dollars (\$350,000), whichever amount is less.

(b) The fee authorized under subdivision (a) may not be imposed on and after January 1, 2005.

(c) All funds derived from the imposition of the fee required under subdivision (a) shall be deposited in the Motor Vehicle Account in the State Transportation Fund and shall be available, upon appropriation, for expenditure to cover the costs incurred by the department and the board in the initial implementation of this article.

#### **Complaints seeking refund involving sale, lease or replacement of recreational vehicle**

3078. (a) If the board receives a complaint from a member of the public seeking a refund involving the sale or lease of, or a replacement of, a recreational vehicle, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, from a motor vehicle dealership, as defined in paragraph (1) of subdivision (e) of Section 3072, the board shall recommend that the complainant consult with the Department of Consumer Affairs.

(b) Nothing in this chapter affects a person's rights regarding a transaction involving a recreational vehicle as defined in subdivision (a), to maintain an action under any other statute, including, but not limited to, applicable provisions of Title 1.7 (commencing with Section 1790) of Part 4 of Division 3 of the Civil Code.

#### **Applicability of article**

3079. This article applies only to a franchise entered into or renewed on or after January 1, 2004.

## ***DIVISION 5. OCCUPATIONAL LICENSING AND BUSINESS REGULATIONS***

### ***Chapter 4. Manufacturers, Transporters, Dealers, and Salesmen***

#### ***Article 1. Issuance of Licenses and Certificates to Manufacturers, Transporters, and Dealers***

##### **License or Temporary Permit Required**

11700. No person shall act as a dealer, remanufacturer, manufacturer, or transporter, or as a manufacturer branch, remanufacturer branch, distributor, or distributor branch, without having first been issued a license as required in Section 11701 or temporary permit issued by the department, except that, when the license or temporary permit has been canceled, suspended, or revoked or has expired, any vehicle in the dealer's inventory and owned by the dealer when the dealer ceased to be licensed may be sold at wholesale to a licensed dealer. The former licensee shall give the purchasing dealer a statement of facts stating that the seller is not a licensed dealer. Any vehicle on consignment with the dealer when the dealer ceased to be licensed shall be returned to the consignor. Any vehicle in the dealer's possession, but not owned by the dealer and not on consignment when the dealer ceased to be licensed, shall be returned to the owner of the vehicle.

##### **Licensing Requirements for Out of State Dealers Without Established Places of Business in State**

11700.1. A dealer who does not have an established place of business in this state but who is currently authorized to do business as, and who has an established place of business as, a vehicle dealer in another state is not subject to licensure under this article if the business transacted in California is limited to the importation of vehicles for sale to, or the export of vehicles purchased from, persons licensed in California under this chapter.

##### **Application of Requirements and Prohibitions to Dealer With Autobroker's Endorsement**

11700.2. A dealer who obtains an autobroker's endorsement to his or her dealer's license is subject to all of the licensing, advertising, and other statutory and regulatory requirements and prohibitions applicable to a dealer, regardless of whether that dealer acts as the buyer of a vehicle, the seller of a vehicle, or provides brokering services on behalf of another or others for the purpose of arranging, negotiating, assisting, or effectuating the sale of a vehicle not owned by that dealer.

##### **Aiding and Abetting**

11700.3 No person may aid and abet a person in the performance of any act in violation of this chapter.

##### **Application for License**

11701. Every manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles of a type subject to registration, or snowmobiles, motorcycles, or trailers of a type subject to identification, shall make application to the department for a license containing a general distinguishing number. The applicant shall submit proof of his or her status as a bona fide manufacturer, manufacturer branch,

remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer as may reasonably be required by the department.

### **Issuance or Refusal of License**

11702. The department may issue, or for reasonable cause shown, refuse to issue a license to any applicant applying for a manufacturer's, manufacturer's branch, remanufacturer's, remanufacturer's branch, distributor's, distributor's branch, transporter's, or dealer's license.

### **Grounds for Refusal to Issue License**

11703. The department may refuse to issue a license to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer, if it determines any of the following:

(a) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this chapter which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.

(b) The applicant was previously a business representative of a business whose license issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.

(c) If the applicant is a business, a business representative of the business was previously the holder of a license, or was a business representative of a business whose license, issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason of their conviction of violations of the provisions of this code, would be ineligible for a license and, by licensing the business, the purposes of this chapter would be defeated.

(d) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or committed any act or engaged in any conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(e) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(f) The information contained in the application is incorrect.

(g) Upon investigation, the business history required by Section 11704 contains incomplete or incorrect information, or reflects substantial business irregularities.

(h) A decision of the department to cancel, suspend, or revoke a license has been made and the applicant was a business representative of the business regulated under that license.

### **Additional Grounds for Refusal**

11703.1. Any of the causes specified in this chapter as a cause to suspend or revoke the license issued to a dealer, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or transporter, is cause to refuse to issue a license to a dealer,

manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or transporter.

### **Unsatisfied Final Judgment as Ground for Refusal to Issue License**

11703.2. The department may refuse to issue a license to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer, when it determines that the applicant has outstanding an unsatisfied final judgment rendered in connection with the purchase, sale, or lease of any vehicle.

### **Reapplication; Waiting Period**

11703.3. A person whose license has been revoked or application for a license has been denied may reapply for a license after a period of not less than one year has elapsed from the effective date of the decision revoking the license or denying the application; except that if the decision was entered under the authority of subdivision (a), (b), (c), or (g) of Section 11703, or 11703.2, or paragraph (6) of subdivision (a) of Section 11705, a reapplication accompanied by evidence satisfactory to the department that such grounds no longer exist may be made earlier than such one-year period.

### **Failure to Disclose Account as Ground for Refusal to Issue License**

11703.4. The department may refuse to issue a license to a dealer when it determines that an applicant for a dealer's license has failed to effectively endorse an authorization for disclosure of an account or accounts relating to the operation of the dealership as provided for in Section 7473 of the Government Code.

### **Application for License; Investigation**

11704. (a) Every applicant who applies for a license pursuant to Section 11701 shall submit an application to the department on the forms prescribed by the department. Such applicant shall provide the department with information as to the applicant's character, honesty, integrity, and reputation, as the department may consider necessary. The department, by regulation, shall prescribe what information is required of such an applicant for the purposes of this subdivision.

(b) Upon receipt of an application for a license which is accompanied by the appropriate fee, the department shall, within 120 days, make a thorough investigation of the information contained in the application.

(c) Every person holding a license issued pursuant to Section 11701 shall notify the department, within 10 days, of any change in the ownership or corporate structure of the licensee.

### **Examination for Dealer's License**

11704.5. (a) Except as provided in subdivision (e), every person who applies for a dealer's license pursuant to Section 11701 for the purpose of transacting sales of used vehicles on a retail or wholesale basis only shall be required to take and successfully complete a written examination prepared and administered by the department before a license may be issued. The examination shall include, but need not be limited to, all of the following laws and subjects:

- (1) Division 12 (commencing with Section 24000), relating to equipment of vehicles.
- (2) Advertising.
- (3) Odometers.



- (4) Vehicle licensing and registration.
- (5) Branch locations.
- (6) Offsite sales.
- (7) Unlawful dealer activities.
- (8) Handling, completion, and disposition of departmental forms.

(b) Prior to the first taking of an examination under subdivision (a), every applicant shall successfully complete a preliminary educational program of not less than four hours. The program shall address, but not be limited to, all of the following topics:

- (1) Chapter 2B (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code, relating to motor vehicle sales finance.
- (2) Motor vehicle financing.
- (3) Truth in lending.
- (4) Sales and use taxes.
- (5) Division 12 (commencing with Section 24000), relating to equipment of vehicles.
- (6) Advertising.
- (7) Odometers.
- (8) Vehicle licensing and registration.
- (9) Branch locations.
- (10) Offsite sales.
- (11) Unlawful dealer activities.
- (12) Air pollution control requirements.
- (13) Regulations of the Bureau of Automotive Repair.
- (14) Handling, completion, and disposition of departmental forms.

(c)(1) Except as provided in paragraph (2) or (3), every dealer who is required to complete a written examination and an educational program pursuant to subdivisions (a) and (b) and who is thereafter issued a dealer's license shall successfully complete, every two years after issuance of that license, an educational program of not less than four hours that offers instruction in the subjects listed under subdivision (a) and the topics listed under subdivision (b), in order to maintain or renew that license.

(2) A dealer is not required to complete the educational program set forth in paragraph (1) if the educational program is completed by a managerial employee employed by the dealer.

(3) Paragraph (1) does not apply to dealers who sell vehicles on a wholesale basis only and who, in a one-year period, deal with less than 50 vehicles that are subject to registration.

(d) Instruction described in subdivision (b) and (c) may be provided by generally accredited educational institutions, private vocational schools, and educational programs and seminars offered by professional societies, organizations, trade associations, and other educational and technical programs that meet the requirements of this section or by the department.

(e) This section does not apply to any of the following:

- (1) An applicant for a new vehicle dealer's license or any employee of that dealer.
- (2) A person who holds a valid license as an automobile dismantler, an employee of that dismantler, or an applicant for an automobile dismantler's license.
- (3) An applicant for a motorcycle only dealer's license or any employee of that dealer.
- (4) An applicant for a trailer only dealer's license or any employee of that dealer.

### **Fee for Dealer's License Examination**

11704.7. Every person who applies to the department to take or retake the examination required under Section 11704.5 shall pay to the department a fee of sixteen dollars (\$16).

### **Suspension or Revocation of License**

11705. (a) The department, after notice and hearing, may suspend or revoke the license issued to a dealer, transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, or distributor branch upon determining that the person to whom the license was issued is not lawfully entitled thereto, or has done any of the following:

(1) Filed an application for the license using a false or fictitious name not registered with the proper authorities, or knowingly made any false statement or knowingly concealed any material fact, in the application for the license.

(2) Made, or knowingly or negligently permitted, any illegal use of the special plates issued to the licensee.

(3) Used a false or fictitious name, knowingly made any false statement, or knowingly concealed any material fact, in any application for the registration of a vehicle, or otherwise committed a fraud in the application.

(4) Failed to deliver to a transferee lawfully entitled thereto a properly endorsed certificate of ownership.

(5) Knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor vehicle.

(6) Failed to provide and maintain a clear physical division between the type of business licensed pursuant to this chapter and any other type of business conducted at the established place of business.

(7) Willfully violated Section 3064 or 3065 or any rule or regulation adopted pursuant thereto.

(8) Violated any provision of Division 3 (commencing with Section 4000) or any rule or regulation adopted pursuant thereto, or subdivision (a) of Section 38200.

(9) Violated any provision of Division 4 (commencing with Section 10500) or any rule or regulation adopted pursuant thereto.

(10) Violated any provision of Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 or any rule or regulation adopted pursuant thereto.

(11) Violated any provision of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code or any rule or regulation adopted pursuant thereto.

(12) Violated any provision of Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code or any rule or regulation adopted pursuant thereto.

(13) Submitted a check, draft, or money order to the department for any obligation or fee due the state which was dishonored or refused payment upon presentation.

(14) Has caused any person to suffer any loss or damage by reason of any fraud or deceit practiced on that person or fraudulent representations made to that person in the course of the licensed activity.

For purposes of this paragraph, "fraud" includes any act or omission which is included within the definition of either "actual fraud" or "constructive fraud" as defined in Sections 1572 and 1573 of the Civil Code, and "deceit" has the same meaning as defined in Section 1710 of the Civil Code. In addition, "fraud" and "deceit" include, but are not limited to, a misrepresentation

in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; an intentional failure to disclose a material fact; and any act within Section 484 of the Penal Code.

For purposes of this paragraph, "person" also includes a governmental entity.

(15) Failed to meet the terms and conditions of an agreement entered into pursuant to Section 11707.

(16) Violated Section 43151, 43152, or 43153 of, or subdivision (b) of Section 44072.10 of, the Health and Safety Code.

(b) Any of the causes specified in this chapter as a cause for refusal to issue a license to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer applicant is cause to suspend or revoke a license issued to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer.

(c) Except as provided in Section 11707, every hearing provided for in this section shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

### **Suspension or Revocation; Warranty Violation**

11705.4. (a) The department, after notice and hearing, may suspend or revoke the license issued to a dealer, transporter, manufacturer, manufacturer branch, distributor, or distributor branch upon determining that the person to whom the license was issued is not lawfully entitled thereto or has willfully violated the terms and conditions of any warranty responsibilities as set forth in Title 1.7 (commencing with Section 1790) of Part 4 of Division 3 of the Civil Code.

(b) Every hearing as provided for in this section shall be pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

### **Suspension or Revocation; Manufacturers**

11705.5. (a) The department, after notice and hearing, may suspend or revoke the license issued to a manufacturer upon determining that the manufacturer has violated paragraph (2) of subdivision (b) of Section 6262 of the Revenue and Taxation Code.

(b) The hearing provided for in subdivision (a) shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

### **Temporary Suspension of License**

11706. The department may, pending a hearing, temporarily suspend the license and special plates issued to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer, for a period not to exceed 30 days, if the director finds that such action is required in the public interest. In any such case, a hearing shall be held and a decision thereon issued within 30 days after notice of the temporary suspension.

Every hearing, as provided for in this section, shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

### **Compromise Settlement Agreements**

11707. (a) After the filing of an accusation under this article, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary penalties, or both. Except as provided in Section 11728, the monetary penalty shall not exceed one thousand dollars (\$1,000) for each violation, and it shall be based on the nature of the violation and the effect of the violation on the purposes of this article.

(b) A compromise settlement agreement may be entered before, during, or after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the administrative law judge, if any, is adopted or the case is decided.

(c) The department shall adopt, by regulation, a schedule of maximum and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that schedule.

(d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated.

(e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law, notwithstanding the agreement, including, but not limited to, refiling the accusation or imposing license sanctions.

### **Refusal to Issue License and Special Plates; Hearings**

11708. (a) Upon refusal of the department to issue a license and special plates to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer, the applicant shall be entitled to demand, in writing, a hearing before the director or his or her representative within 60 days after notice of refusal.

(b) The hearing shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

### **Posting of License; Signs or Devices; Sale of Trailer with Vessel**

11709. (a) A dealer's established place of business, and other sites or locations as may be operated and maintained by the dealer in conjunction with his or her established place of business, shall have posted, in a place conspicuous to the public in each and every location, the license issued by the department to the dealer and to each salesman employed by the dealer and shall have erected or posted thereon signs or devices providing information relating to the dealer's name and the location and address of the dealer's established place of business to enable any person doing business with the dealer to identify him or her properly. Every such sign erected or posted, on an established place of business, shall have an area of not less than two square feet per side displayed and shall contain lettering of sufficient size to enable the sign to be read from a distance of at least 50 feet. This section shall not apply to a dealer who is a wholesaler involved

for profit only in the sale of vehicles between licensed dealers.

(b) Notwithstanding Section 11704 and this section, a dealer may display vehicles at a fair, exposition, or similar exhibit without securing a branch license, if no actual sales are made at those events and the display does not exceed 30 days.

(c) All vehicles displayed pursuant to subdivision (b) or (e) shall be identified by a sign or device providing information relating to the dealer's name and the location and address of the dealer's established place of business.

(d) This section shall not be applicable to a dealer who deals only in off-highway vehicles subject to identification, as defined in Section 38012.

(e) Notwithstanding Section 11704 and this section, a vessel dealer may display a trailer and may sell a trailer in conjunction with the sale of a vessel at a fair, exposition, or similar exhibit without securing a branch license, if the display does not exceed 30 days.

### **Sale of Used Vehicle; Notice**

11709.1. Every dealer who displays or offers one or more used vehicles for sale at retail shall post a notice not less than 8 inches high and 10 inches wide, in a place conspicuous to the public, which states the following:

"The prospective purchaser of a vehicle may, at his or her own expense and with the approval of the dealer, have the vehicle inspected by an independent third party either on or off these premises."

### **Display of Notice Regarding Lack of "Cooling Off Period"**

11709.2. Every dealer shall conspicuously display a notice, not less than eight inches high and 10 inches wide, in each sales office and sales cubicle of a dealer's established place of business where written terms of specific sale or lease transactions are discussed with prospective purchasers or lessees, and in each room of a dealer's established place of business where sale and lease contracts are regularly executed, which states the following:

"NO COOLING-OFF PERIOD"

California law does not provide for a "cooling-off" or other cancellation period for vehicle lease or purchase contracts. Therefore, you cannot later cancel such a contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign a motor vehicle purchase or lease contract, it may only be canceled with the agreement of the seller or lessor or for legal cause, such as fraud."

### **Clear and Conspicuous Display of Listing of all Advertised Vehicles for Sale**

11709.3. (a) Every dealer shall clearly and conspicuously display in its showroom at its established place of business, in a place that is easily accessible to prospective purchasers, a clear and conspicuous listing of each vehicle that the dealer has advertised for sale if the vehicle meets all of the following requirements:

(1) The vehicle is advertised for sale in a newspaper or other publication of general circulation, or in any other advertising medium that is disseminated to the public generally, including, but not limited to, radio, television, or the Internet.

(2) The vehicle is advertised at a specific price and is required pursuant to subdivision (a) of Section 11713.1 to be identified in the advertisement by its vehicle identification number or license number.

(3) The vehicle has not been sold or leased during the time that the advertised price is valid.

(4) The vehicle does not clearly and conspicuously have displayed on or in it the advertised price.

(b) The listing required by subdivision (a) may be satisfied by clearly and conspicuously posting in the showroom a complete copy of any print advertisement that includes vehicles currently advertised for sale or by clearly and conspicuously displaying in the showroom a list of currently advertised vehicles described by make, model, model-year, vehicle identification number, or license number, and the advertised price.

#### **Bond; Service of Process (Amended)**

11710. (a) Before any dealer's or remanufacturer's license is issued or renewed by the department to any applicant therefor, the applicant shall procure and file with the department a bond executed by an admitted surety insurer, approved as to form by the Attorney General, and conditioned that the applicant shall not practice any fraud or make any fraudulent representation which will cause a monetary loss to a purchaser, seller, financing agency, or governmental agency.

(b) A dealer's bond shall be in the amount of fifty thousand dollars (\$50,000), except the bond of a dealer who deals exclusively in motorcycles shall be in the amount of ten thousand dollars (\$10,000). Before the license is renewed by the department, the dealer, other than a dealer who deals exclusively in motorcycles, shall procure and file a bond in the amount of fifty thousand dollars (\$50,000). A remanufacturer bond shall be in the amount of fifty thousand dollars (\$50,000).

(c) Liability under the bond is to remain at full value. If the amount of liability under the bond is decreased or there is outstanding a final court judgment for which the dealer or remanufacturer and sureties are liable, the dealer's or remanufacturer's license shall be automatically suspended. In order to reinstate the license and special plates, the licensee shall either file an additional bond or restore the bond on file to the original amount, or shall terminate the outstanding judgment for which the dealer or remanufacturer and sureties are liable.

(d) A dealer's or remanufacturer's license, or renewal of the license, shall not be issued to any applicant therefor, unless and until the applicant files with the department a good and sufficient instrument, in writing, in which the applicant appoints the director as the true and lawful agent of the applicant upon whom all process may be served in any action, or actions, which may thereafter be commenced against the applicant, arising out of any claim for damages suffered by any firm, person, association, or corporation, by reason of the violation of the applicant of any of the terms and provisions of this code or any condition of the dealer's or remanufacturer's bond. The applicant shall stipulate and agree in the appointment that any process directed to the applicant, when personal service of process upon the applicant cannot be made in this state after due diligence and, in that case, is served upon the director or, in the event of the director's absence from the office, upon any employee in charge of the office of the director, shall be of the same legal force and effect as if served upon the applicant personally. The applicant shall further stipulate and agree, in writing, that the agency created by the appointment shall continue for and during the period covered by any license that may be issued and so long thereafter as the applicant may be made to answer in damages for a violation of this

code or any condition of the bond. The instrument appointing the director as the agent for the applicant for service of process shall be acknowledged by the applicant before a notary public. In any case where the licensee is served with process by service upon the director, one copy of the summons and complaint shall be left with the director or in the director's office in Sacramento or mailed to the office of the director in Sacramento. A fee of five dollars (\$5) shall also be paid to the director at the time of service of the copy of the summons and complaint. Service on the director shall be a sufficient service on the licensee if a notice of service and a copy of the summons and complaint are immediately sent by registered mail by the plaintiff or the plaintiff's attorney to the licensee. A copy of the summons and complaint shall also be mailed by the plaintiff or the plaintiff's attorney to the surety on the applicant's bond at the address of the surety given in the bond, postpaid and registered with request for return receipt. The director shall keep a record of all process so served upon the director, which record shall show the day and hour of service and shall retain the summons and complaint so served on file. Where the licensee is served with process by service upon the director, the licensee shall have and be allowed 30 days from and after the service within which to answer any complaint or other pleading which may be filed in the cause. However, for purposes of venue, where the licensee is served with process by service upon the director, the service is deemed to have been made upon the licensee in the county in which the licensee has or last had an established place of business.

#### **Bond Amount**

11710.1 Notwithstanding subdivision (b) of Section 11710, the bond amount of a dealer who sells vehicles on a wholesale basis only, and who sells fewer than 25 vehicles per year, shall be ten thousand dollars (\$10,000).

#### **Return of Deposit Given in Lieu of Bond; Cost of Proceedings**

11710.2. If a deposit is given instead of the bond required by Section 11710 both of the following apply:

(a) The director may order the deposit returned at the expiration of three years from the date an applicant for a dealer's license who has operated a business of selling vehicles under a temporary permit has ceased to do business, or three years from the date a licensee has ceased to be licensed, if the director is satisfied that there are no outstanding claims against the deposit. A judge of a municipal or superior court may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

(b) If either the director, department, or state is a defendant in any action instituted to recover all or any part of the deposit, or any action is instituted by the director, department, or state to determine those entitled to any part of the deposit, the director, department, or state shall be paid reasonable attorney fees and costs from the deposit. Costs shall include those administrative costs incurred in processing claims against the deposit.

#### **Fraud and Other Violations of Law; Priority of Claims**

11711. (a) If any person (1) shall suffer any loss or damage by reason of any fraud practiced on him or fraudulent representation made to him by a licensed dealer or one of such dealer's salesmen acting for the dealer, in his behalf, or within the scope of the employment of such salesman and such person has possession of a written instrument furnished by the licensee,

containing stipulated provisions and guarantees which the person believes have been violated by the licensee, or (2) if any person shall suffer any loss or damage by reason of the violation by such dealer or salesman of any of the provisions of Division 3 (commencing with Section 4000) of this code, or (3) if any person is not paid for a vehicle sold to and purchased by a licensee, then any such person shall have a right of action against such dealer, his salesman, and the surety upon the dealer's bond, in an amount not to exceed the value of the vehicle purchased from or sold to the dealer.

(b) If the state or any political subdivision thereof shall suffer any loss or damage by reason of any fraud practiced on the state or fraudulent representation made to the state by a licensed dealer, or one of such dealer's representatives acting for the dealer, in his behalf, or within the scope of employment of such representatives, or shall suffer any loss or damage by reason of the violation of such dealer or representative of any of the provisions of Division 3 (commencing with Section 4000) of this code, or Part 5 (commencing with Section 10701), Division 2 of the Revenue and Taxation Code, the state or any political subdivision thereof, through the department, shall have a right of action against such dealer, his representative, and the surety upon the dealer's bond in an amount not to exceed the value of the vehicles involved.

(c) The failure of a dealer upon demand to pay the fees and penalties determined to be due as provided in Section 4456 hereof is declared to be a violation of Division 3 (commencing with Section 4000) of this code, and Part 5 (commencing with Section 10701), Division 2 of the Revenue and Taxation Code and to constitute loss or damage to the state in the amounts of such fees and penalties determined to be due and not paid.

(d) The claims of the State under subdivision (b) shall be satisfied first and entitled to preference over all claims under subdivision (a).

(e) The claims of any person under subdivision (a) who is not a licensee shall be satisfied first and entitled to preference over all other claims under subdivision (a).

### **Non Dealer Inability to Bring Action**

11711.3. A person acting as a dealer, who was not licensed as a dealer as required by this article, or a person acting as a lessor-retailer, who was not licensed as a lessor-retailer as required by Chapter 3.5 (commencing with Section 11600), may not enforce any security interest or bring or maintain any action in law or equity to recover any money or property or obtain other relief from the purchaser or lessee of a vehicle in connection with a transaction in which the person was, at the time of the transaction, required to be licensed as a dealer or a lessor-retailer.

### **Change of Established Place of Business**

11712. (a) The department shall not issue a dealer's license to any applicant therefor who has not an established place of business as defined in this code. Should the dealer change the site or location of his established place of business, he or she shall, immediately upon making that change, so notify the department. Should a dealer for any reason whatsoever, cease to be in possession of an established place of business from and on which he or she conducts the business for which he or she is licensed, he or she shall immediately notify the department and, upon demand by the department, shall deliver to the department the dealer's license, dealer's special plate or plates, and all report of sale books in his or her possession.

(b) Should the dealer change to, or add another franchise for the sale of new vehicles, or cancel or, for any cause whatever, otherwise lose a franchise for the sale of new vehicles, he or



she shall immediately so notify the department.

(c) Any person licensed under this article who has closed his or her established place of business may be served with process issued pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code by registered mail at that place of business or at the mailing address of record if different from the established place of business, unless the person has notified the department in writing of another address where service may be made.

### **Sales of Motorcycles and Light Duty Trucks; Required Price Information**

11712.5. It is unlawful and a violation of this code for a dealer issued a license pursuant to this article to sell, offer for sale, or display any new vehicle, as follows:

(a) A new motorcycle unless there is securely attached thereto a statement as required by Section 24014.

(b) A new light duty truck with a manufacturer's gross vehicle weight rating of 8,500 pounds or less unless there is affixed to the light duty truck the label required by Section 24013.5.

### **Unlawful Acts**

11713. No holder of any license issued under this article shall do any of the following:

(a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate, or cause to be so disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

(b) (1) (A) Advertise or offer for sale or exchange in any manner, any vehicle not actually for sale at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time of the advertisement or offer. However, a dealer who has been issued an autobroker's endorsement to his or her dealer's license may advertise his or her service of arranging or negotiating the purchase of a new motor vehicle from a franchised new motor vehicle dealer and may specify the line-makes and models of those new vehicles. Autobrokering service advertisements may not advertise the price or payment terms of any vehicle and shall disclose that the advertiser is an autobroker or auto buying service, and shall clearly and conspicuously state the following: "All new cars arranged for sale are subject to price and availability from the selling franchised new car dealer."

(B) As to printed advertisements, the disclosure statement required by subparagraph (A) shall be printed in not less than 10-point bold type size and shall be textually segregated from the other portions of the printed advertisement.

(2) Notwithstanding subparagraph (A), classified advertisements for autobrokering services that measure two column inches or less are exempt from the disclosure statement in subparagraph (A) pertaining to price and availability.

(3) Radio advertisements of a duration of less than 11 seconds that do not reference specific line-makes or models of motor vehicles are exempt from the disclosure statement required in subparagraph (A).

(c) Fail, within 48 hours, in writing to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) Advertise or represent a vehicle as a new vehicle if the vehicle is a used vehicle.

(e) Engage in the business for which the licensee is licensed without having in force and effect a bond as required by this article.

(f) Engage in the business for which the dealer is licensed without at all times maintaining an established place of business as required by this code.

(g) Include, as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which is not due to the state unless, prior to the sale, that amount has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of the fees. However, a dealer may collect from the second purchaser of a vehicle a prorated fee based upon the number of months remaining in the registration year for that vehicle, if the vehicle had been previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid, as required by this code and Chapter 2 (commencing with Section 10751) of Division 2 of the Revenue and Taxation Code, were returned to the first purchaser of the vehicle.

(h) Employ any person as a salesperson who has not been licensed pursuant to Article 2 (commencing with Section 11800), and whose license is not displayed on the premises of the dealer as required by Section 11812, or willfully fail to notify the department by mail within 10 days of the employment or termination of employment of a salesperson.

(i) Deliver, following the sale, a vehicle for operation on California highways, if the vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000). This subdivision does not apply to the sale of a leased vehicle to the lessee if the lessee is in possession of the vehicle immediately prior to the time of the sale and the vehicle is registered in this state.

(j) Use, or permit the use of, the special plates assigned to him or her for any purpose other than as permitted by Section 11715.

(k) Advertise or otherwise represent, or knowingly allow to be advertised or represented on behalf of, or at the place of business of, the licenseholder that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle. The terms "no downpayment," "zero down delivers," or similar terms shall not be advertised unless the vehicle will be sold to any qualified purchaser without a prior payment of any kind or trade-in.

(l) Participate in the sale of a vehicle required to be reported to the Department of Motor Vehicles under Section 5900 or 5901 without making the return and payment of the full sales tax due and required by Section 6451 of the Revenue and Taxation Code.

(m) Permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the purchase or sale of vehicles required to be registered under this code, or permit the use of the dealer's license, supplies, or books to operate a branch location to be used by any other person, whether or not the licensee has any financial or equitable interest or investment in the vehicles purchased or sold by, or the business of, or branch location used by, the other person.

(n) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(o) Sell a previously unregistered vehicle without disclosing in writing to the purchaser the date on which any manufacturer's or distributor's warranty commenced.

(p) Accept a purchase deposit relative to the sale of a vehicle, unless the vehicle is present at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time the dealer accepts the deposit. Purchase deposits accepted by an autobroker when brokering a retail sale shall be governed by Sections 11736 and 11737.

(q) Consign for sale to another dealer a new vehicle.

(r) Display a vehicle for sale at a location other than an established place of business authorized by the department for that dealer or display a new motor vehicle at the business premises of another dealer registered as an autobroker. This subdivision does not apply to the display of a vehicle pursuant to subdivision (b) of Section 11709 or the demonstration of the qualities of a motor vehicle by way of a test drive.

(s) Use a picture in connection with any advertisement of the price of a specific vehicle or class of vehicles, unless the picture is of the year, make and model being offered for sale. The picture shall not depict a vehicle with optional equipment or a design not actually offered at the advertised price.

(t) Advertise a vehicle for sale that was used by the selling licensee in its business as a demonstrator, executive vehicle, service vehicle, rental, loaner, or lease vehicle, unless the advertisement clearly and conspicuously discloses the previous use made by that licensee of the vehicle. An advertisement shall not describe any of those vehicles as "new."

#### **Unlawful Acts by Holder of Dealer's License**

11713.1. It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) Advertise any specific vehicle for sale without identifying the vehicle by its model, model-year, and either its license number or that portion of the vehicle identification number that distinguishes the vehicle from all other vehicles of the same make, model, and model-year. Model-year is not required to be advertised for current model-year vehicles. Year models are no longer current when ensuing year models are available for purchase at retail in California. Any advertisement that offers for sale a class of new vehicles in a dealer's inventory, consisting of five or more vehicles, that are all of the same make, model, and model-year is not required to include in the advertisement the vehicle identification numbers or license numbers of those vehicles.

(b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, the California tire fee, as defined in Section 42885 of the Public Resources Code, emission testing fees not exceeding fifty dollars (\$50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document preparation charge. The dealer document preparation charge shall not exceed forty-five dollars (\$45).

(c) (1) Exclude from an advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer document preparation charge.

(2) The obligations imposed by paragraph (1) shall be satisfied by adding to the advertisement a statement containing no abbreviations and that is worded in substantially the following form: "Plus government fees and taxes, any finance charges, any dealer document preparation charge, and any emission testing charge."

(3) For purposes of paragraph (1), "advertisement" means any advertisement in a newspaper, magazine, or direct mail publication that is two or more columns in width or one column in width and more than seven inches in length, or on any Web page of a dealer's Web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer document preparation charge, which charges shall not exceed forty-five dollars (\$45) for the document preparation charge and not to exceed fifty dollars (\$50) for emission testing plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed. Advertised vehicles shall be sold at or below the advertised total price, with statutorily permitted exclusions, regardless of whether the purchaser has knowledge of the advertised total price.

(f) (1) Advertise for sale, sell, or purchase for resale any new vehicle of a line-make for which the dealer does not hold a franchise.

(2) This subdivision does not apply to any transaction involving any of the following:

(A) A mobilehome.

(B) A recreational vehicle as defined in Section 18010 of the Health and Safety Code.

(C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(D) An off-highway motor vehicle subject to identification as defined in Section 38012.

(E) A manufactured home.

(F) A new vehicle that will be substantially altered or modified by a converter prior to resale.

(G) A commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds.

(H) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.

(g) Sell a park trailer, as specified in Section 18009.3 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term "free" includes merchandise or services offered for sale at a price less than the seller's cost of the merchandise or services.

(i) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are

sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as "starting at," "from," "beginning as low as," or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

For purposes of this subdivision, in any newspaper advertisement for a vehicle that is two model-years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be (1) printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price, however, in no case shall the phrase be printed in less than 8-point type size, and (2) be disclosed immediately above, below, or beside the advertised price without any intervening words, pictures, marks, or symbols.

The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale. (j) Use the term "rebate" or similar words such as "cash back" in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, "cash price" has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(l) Advertise a guaranteed trade-in allowance.

(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Use the terms "invoice," "dealer's invoice," "wholesale price," or similar terms that refer to a dealer's cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:

A) The manufacturer's or distributor's invoice price to a dealer.

B) A dealer's cost.

(2) This subdivision does not apply to either of the following: (A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser initiates a discussion of the vehicle's invoice price or the dealer's cost for that vehicle.

(B) Any communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a "commercial purchaser" means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

(o) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is "fully factory equipped."

(q) Affix on any new vehicle a supplemental price sticker containing a price that represents the dealer's asking price which exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer's suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as "added mark-up."

(r) Advertise any underselling claim, such as "we have the lowest prices" or "we will beat any dealer's price," unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) Advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision, "incentive" means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) Display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that franchisor a false name for the purchaser or false date for the date of sale.

(v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

(w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

(x) Fail to disclose, in a clear and conspicuous manner in at least 10-point bold type on the face of any contract for the retail sale of a new motor vehicle that this transaction is, or is not, subject to a fee received by an autobroker from the selling new motor vehicle dealer, and the name of the autobroker, if applicable.

(y) As used in this section, the terms "make" and "model" have the same meaning as is provided in Section 565.3 of Title 49 of the Code of Federal Regulations.

### **Unlawful Coercion or Attempt to Coerce Dealer to do Certain Things**

11713.2. It shall be unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to coerce or attempt to coerce

any dealer in this state:

(a) To order or accept delivery of any motor vehicle, part or accessory thereof, appliance, equipment or any other commodity not required by law which shall not have been voluntarily ordered by the dealer.

(b) To order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(c) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever.

(d) To participate in an advertising campaign or contest, any promotional campaign, promotional materials, training materials, showroom or other display decorations or materials at the expense of the dealer.

(e) To enter into any agreement with the manufacturer, manufacturer branch, distributor, or distributor branch, or to do any other act prejudicial to the dealer by threatening to cancel a franchise or any contractual agreement existing between the dealer and manufacturer, manufacturer branch, distributor, or distributor branch. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this article.

#### **Unlawful by Manufacturer, Manufacturer Branch, Distributor, or Distributor Branch**

11713.3. It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do any of the following:

(a) To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle or parts or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer, manufacturer branch, distributor, or distributor branch.

(b) To prevent or require, or attempt to prevent or require, by contract or otherwise, any change in the capital structure of a dealership or the means by or through which the dealer finances the operation of the dealership, provided that the dealer at all times meets any reasonable capital standards agreed to by the dealer and the manufacturer or distributor, and also provided that no change in capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.

(c) To prevent or require, or attempt to prevent or require, a dealer to change the executive management of a dealership, other than the principal dealership operator or operators if the franchise was granted the dealer in reliance upon the personal qualifications of such person or persons.

(d)(1) Except as provided in subdivision (t), to prevent or require, or attempt to prevent or require, by contract or otherwise, any dealer, or any officer, partner, or stockholder of any dealership, the sale or transfer of any part of the interest of any of them to any other person or persons. No dealer, officer, partner, or stockholder shall, however, have the right to sell, transfer, or assign the franchise, or any right thereunder, without the consent of the manufacturer or distributor except that the consent shall not be unreasonably withheld.

(2)(A) For the transferring franchisee to fail, prior to the sale, transfer, or assignment of a franchisee or the sale, assignment, or transfer of all or substantially all of the assets of the franchised business or a controlling interest in the franchised business to another person, to notify the manufacturer or distributor of the franchisee's decision to sell, transfer, or assign the franchise. The notice shall be in writing and shall include all of the following:

(i) The proposed transferee's name and address.

(ii) A copy of all of the agreements relating to the sale, assignment, or transfer of the franchised business or its assets.

(iii) The proposed transferee's application for approval to become the successor franchisee. The application shall include forms and related information generally utilized by the manufacturer or distributor in reviewing prospective franchisees, if those forms are readily made available to existing franchisees. As soon as practicable after receipt of the proposed transferee's application, the manufacturer or distributor shall notify the franchisee and the proposed transferee of any information needed to make the application complete.

(B) For the manufacturer or distributor, to fail on or before 60 days after the receipt of all of the information required pursuant to subparagraph (A), or as extended by a written agreement between the manufacturer or distributor and the franchisee, to notify the franchisee of the approval or the disapproval of the sale, transfer, or assignment of the franchise. The notice shall be in writing and shall be personally served or sent by certified mail, return receipt requested, or by guaranteed overnight delivery service that provides verification of delivery and shall be directed to the franchisee. Any proposed sale, assignment, or transfer shall be deemed approved, unless disapproved by the franchisor in the manner provided by this subdivision. If the proposed sale, assignment, or transfer is disapproved, the franchisor shall include in the notice of disapproval a statement setting forth the reasons for the disapproval.

(3) In any action in which the manufacturer's or distributor's withholding of consent under this subdivision or subdivision (e) is an issue, whether the withholding of consent was unreasonable is a question of fact requiring consideration of all the existing circumstances.

(e) To prevent, or attempt to prevent, a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall be no transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld or conditioned upon the release, assignment, novation, waiver, estoppel, or modification of any claim or defense by the dealer.

(f) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and that other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the dealer.

(g) To require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this article or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the board, if the referral would be binding on the dealer. This subdivision does not, however, prohibit arbitration before an independent arbitrator.

(h) To increase prices of motor vehicles which the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer is evidence of each such order. In the event of manufacturer price reductions, the amount of the reduction received by a dealer shall be passed



on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer.

Price reductions apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by either (1) the addition to a motor vehicle of required or optional equipment pursuant to state or federal law, or (2) revaluation of the United States dollar in the case of foreign-make vehicles, are not subject to this subdivision.

(i) To fail to pay to a dealer, within a reasonable time following receipt of a valid claim by a dealer thereof, any payment agreed to be made by the manufacturer or distributor to the dealer by reason of the fact that a new vehicle of a prior year model is in the dealer's inventory at the time of introduction of new model vehicles.

(j) To deny the widow or heirs designated by a deceased owner of a dealership, the opportunity to participate in the ownership of the dealership or successor dealership under a valid franchise for a reasonable time after the death of the owner.

(k) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line-make to be sold to the state or any political subdivision thereof without making the same offer to all other dealers in the same line-make within the relevant market area.

(l) To modify, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of Article 4 (commencing with Section 3060) of Chapter 6 of Division 2.

(m) To employ a person as a representative who has not been licensed pursuant to Article 3 (commencing with Section 11900) of Chapter 4 of Division 5.

(n) To deny any dealer the right of free association with any other dealer for any lawful purpose.

(o)(1) To compete with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area.

(2) A manufacturer, branch, or distributor or any entity that controls or is controlled by, a manufacturer, branch, or distributor, shall not, however, be deemed to be competing in the following limited circumstances:

(A) Owning or operating a dealership for a temporary period, not to exceed one year. However, after a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the board may extend the time period. The board shall extend the time period until December 31, 2002, for any manufacturer that meets all of the following requirements:

(i) The manufacturer has no more than 25 franchisees in the state and those franchisees collectively operate dealership facilities in at least 15 counties of the state.

(ii) All of the dealership facilities operated by the manufacturer's franchisees in the state trade exclusively in the manufacturer's line-make.

(iii) No fewer than one-half of the manufacturer's franchisees in the state own and operate two or more dealership facilities in their assigned areas of responsibility.

(iv) The manufacturer holds a temporary ownership interest in no more than two dealerships in the state that are located in the relevant market area of any other franchisee of the same line-make not owned, in whole or part, by the manufacturer.

(B) Owning an interest in a dealer as part of a bona fide dealer development program that

satisfies all of the following requirements:

(i) The sole purpose of the program is to make franchises available to persons lacking capital, training, business experience, or other qualities ordinarily required of prospective franchisees and the dealer development candidate is an individual who is unable to acquire the franchise without assistance of the program.

(ii) The dealer development candidate has made a significant investment subject to loss in the franchised business of the dealer.

(iii) The program requires the dealer development candidate to manage the day-to-day operations and business affairs of the dealer and to acquire, within a reasonable time and on reasonable terms and conditions, beneficial ownership and control of a majority interest in the dealer and disassociation of any direct or indirect ownership or control by the manufacturer, branch, or distributor.

(C) Owning a wholly owned subsidiary corporation of a distributor that sells motor vehicles at retail, if, for at least three years prior to January 1, 1973, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of vehicles at retail.

(3)(A) Every manufacturer, branch, and distributor that owns or operates a dealership in the manner described in subparagraph (A) of paragraph (2) shall give written notice to the board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires or divests itself of an ownership interest.

(B) Every manufacturer, branch, and distributor that owns an interest in a dealer in the manner described in subparagraph (B) of paragraph (2) shall give written notice to the board, annually, of the name and location of each dealer in which it has an ownership interest.

(p) To unfairly discriminate among its franchisees with respect to warranty reimbursement or authority granted its franchisees to make warranty adjustments with retail customers.

(q) To sell vehicles to persons not licensed under this chapter for resale.

(r) To fail to affix an identification number to any park trailer, as described in Section 18009.3 of the Health and Safety Code, that is manufactured on or after January 1, 1987, and which does not clearly identify the unit as a park trailer to the department. The configuration of the identification number shall be approved by the department.

(s) To dishonor a warranty, rebate, or other incentive offered to the public or a dealer in connection with the retail sale of a new motor vehicle, based solely upon the fact that an autobroker arranged or negotiated the sale. This subdivision shall not prohibit the disallowance of that rebate or incentive if the purchaser or dealer is ineligible to receive the rebate or incentive pursuant to any other term or condition of a rebate or incentive program.

(t) To exercise a right of first refusal or any other right requiring a franchisee or any owner thereof to sell, transfer, or assign to the franchisor, or to any nominee of the franchisor, all or any material part of the franchised business or of the assets thereof unless all of the following requirements are met:

(1) The franchise authorizes the franchisor to exercise a right of first refusal to acquire the franchised business or assets thereof in the event of a proposed sale, transfer or assignment.

(2) The franchisor gives written notice of its exercise of the right of first refusal no later than 45 days after the franchisor receives all of the information required pursuant to subparagraph (A) of paragraph (2) of subdivision (d).

(3) The sale, transfer, or assignment being proposed relates to not less than all or substantially all of the assets of the franchised business or to a controlling interest in the franchised business.

(4) The proposed transferee is neither a family member of an owner of the franchised business, nor a managerial employee of the franchisee owning 15 percent or more of the franchised business, nor a corporation, partnership, or other legal entity owned by the existing owners of the franchised business. For purposes of this paragraph, a “family member” means the spouse of an owner of the franchised business, the child, grandchild, brother, sister, or parent of an owner, or a spouse of one of those family members. Nothing contained in this paragraph limits the rights of the franchisor to disapprove a proposed transferee as provided in subdivision (d).

(5) Upon the franchisor’s exercise of the right of first refusal, the consideration paid by the franchisor to the franchisee and owners of the franchised business shall equal or exceed all consideration that each of them were to have received under the terms of, or in connection with, the proposed sale, assignment, or transfer, and the franchisor shall comply with all the terms and conditions of the agreement or agreements to sell, transfer, or assign the franchised business.

(6) The franchisor shall reimburse the proposed transferee for any expenses paid or incurred by the proposed transferee in evaluating, investigating, and negotiating the proposed transfer to the extent those expenses do not exceed the usual, customary, and reasonable fees charged for similar work done in the area in which the franchised business is located. These expenses include, but are not limited to, legal and accounting expenses, and expenses incurred for title reports and environmental or other investigations of any real property on which the franchisee’s operations are conducted. The proposed transferee shall provide the franchisor a written itemization of those expenses, and a copy of all nonprivileged reports and studies for which expenses were incurred, if any, within 30 days of the proposed transferee’s receipt of a written request from the franchisor for that accounting. The franchisor shall make payment within 30 days of exercising the right of first refusal.

(u)(1) To unfairly discriminate in favor of any dealership owned or controlled, in whole or part, by a manufacturer or distributor or an entity that controls or is controlled by the manufacturer or distributor. Unfair discrimination includes, but is not limited to, the following: (A) The furnishing to any franchisee or dealer that is owned or controlled, in whole or part, by a manufacturer, branch or distributor of any of the following:

(i) Any vehicle that is not made available to each franchisee pursuant to a reasonable allocation formula that is applied uniformly, and any part or accessory that is not made available to all franchisees on an equal basis when there is no reasonable allocation formula that is applied uniformly.

(ii) Any vehicle, part, or accessory that is not made available to each franchisee on comparable delivery terms, including time of delivery after placement of order. Differences in delivery terms due to geographic distances or other factors beyond the control of the manufacturer, branch, or distributor shall not constitute unfair competition.

(iii) Any information obtained from a franchisee by the manufacturer, branch, or distributor concerning the business affairs or operations of any franchisee in which the manufacturer, branch, or distributor does not have an ownership interest. The information includes, but is not limited to, information contained in financial statements and operating reports, the name, address, or other personal information or buying, leasing, or service behavior

of any dealer customer, and any other information which if provided to a franchisee or dealer owned or controlled by a manufacturer or distributor would give that franchisee or dealer a competitive advantage. This clause does not apply if the information is provided pursuant to a subpoena or court order, or to aggregated information made available to all franchisees.

(B) Referring a prospective purchaser or lessee to a dealer in which a manufacturer, branch, or distributor has an ownership interest unless the prospective purchaser or lessee resides in the area of responsibility assigned to that dealer or the prospective purchaser or lessee requests to be referred to that dealer.

(2) Nothing in this subdivision shall be interpreted to prohibit a franchisor from granting a franchise to prospective franchisees or assisting those franchisees during the course of the franchise relationship as part of a program or programs to make franchises available to persons lacking capital, training, business experience, or other qualifications ordinarily required of prospective franchisees.

(v) As used in this section, “area of responsibility” is a geographic area specified in a franchise that is used by the franchisor for the purpose of evaluating the franchisee’s performance of its sales and service obligations.

### **Return of Amount in Excess of Actual Fees**

11713.4. If a purchaser of a vehicle pays to the dealer an amount for the licensing or transfer of title of the vehicle, which amount is in excess of the actual fees due for such licensing or transfer, or which amount is in excess of the amount which has been paid, prior to the sale, by the dealer to the state in order to avoid penalties that would have accrued because of late payment of such fees, the dealer shall return such excess amount to the purchaser, whether or not such purchaser requests the return of the excess amount.

### **Unlawful Representation of Vehicle Year Model**

11713.5. (a) It is unlawful and a violation of this code for the holder of any license issued under this article to display for sale, offer for sale, or sell, a motor vehicle, representing the motor vehicle to be of a year model different from the year model designated at the time of manufacture or first assembly as a completed vehicle.

(b) It is unlawful and a violation of this code for the holder of any license issued under this article to directly or indirectly authorize or advise another holder of a license issued under this article to change the year model of a motor vehicle in the inventory of the other holder.

(c) It is unlawful and a violation of this code for the holder of any license issued under this article to display for sale, offer for sale, or sell, a housecar which has been manufactured in two or more stages, unless the licensee informs the buyer that the housecar has been so manufactured and the licensee provides the buyer with a form, approved by the department, which sets forth the date of chassis and engine manufacture and the date and model year of the other stages of the vehicle. The licensee shall retain a copy of the form, which shall be signed by the purchaser prior to entering into any sales contract, indicating that the purchaser has received a copy of the form.

(d) This section does not apply to the displaying or offering for sale, or selling, of any new motortruck or truck tractor weighing over 10,000 pounds.

(e) This section does not apply to a vehicle which has been remanufactured by a licensed remanufacturer. The year model of a remanufactured vehicle will be the year the vehicle was

remanufactured.

### **Tire Chains Information Required of Dealer**

11713.6. (a) It is unlawful and a violation of this code for the holder of any dealer's license issued under this article to fail to disclose in writing to the buyer or lessee of a new motor vehicle, that the vehicle, as equipped, may not be operated on a highway signed for the requirement of tire chains if the owner's manual or other material provided by the manufacturer states that the vehicle, as equipped, may not be operated with tire chains.

(b) The disclosure required under subdivision (a) shall meet both of the following requirements:

(1) The disclosure shall be printed in not less than 14-point boldface type on a single sheet of paper that contains no information other than the disclosure.

(2) The disclosure shall include the following language in capital letters:  
"AS EQUIPPED, THIS VEHICLE MAY NOT BE OPERATED WITH TIRE CHAINS BUT MAY ACCOMMODATE SOME OTHER TYPE OF TIRE TRACTION DEVICE. SEE THE OWNER'S MANUAL FOR DETAILS."

(c) Prior to the sale or lease, the dealer shall present the disclosure statement for the buyer's or lessee's signature and then shall provide the buyer or lessee with a copy of the signed disclosure.

### **Remanufactured Vehicles; Disclosure to Buyer; Requirements**

11713.7. Disclosure to a buyer that a vehicle has been remanufactured is required. Disclosure shall be accomplished by all of the following:

(a) Oral notification to the buyer.

(b) The statement "THIS VEHICLE HAS BEEN REMANUFACTURED AND CONTAINS USED OR RECONDITIONED PARTS" shall appear in a type size at least the same as the bulk of the text on the purchase order or conditional sales contract signed by the buyer.

(c) The statement that the vehicle is remanufactured and contains used or reconditioned parts shall appear in any advertisement pertaining to remanufactured vehicles.

(d) Remanufactured vehicles displayed for retail purposes shall be clearly designated as remanufactured. The disclosure statement required in subdivision (b) shall appear on the vehicle or at the location where the vehicles are displayed.

### **Duties of Remanufacturer; Violation of Code**

11713.8. It is unlawful and a violation of this code for a remanufacturer licensed under this code to fail to do any of the following:

(a) Report to the department an existing vehicle identification number when a used frame is utilized.

(b) Die stamp the vehicle identification number to the frame of the vehicle when a new vehicle identification number is assigned.

(c) Disclose that a vehicle is remanufactured and contains used or reconditioned parts as required by Section 11713.7.

(d) Remove the trade name of the original manufacturer from the vehicle, unless the remanufacturer and the original manufacturer are same.

(e) Maintain for three years bills of sale or invoices for used parts utilized in a remanufactured vehicle.

(f) Maintain for three years proof that the vehicle was reported dismantled, as required by Section 5500 or 11520, when a used frame is utilized in a remanufactured vehicle.

(g) Disclose, on the vehicle identification number plate or label, that the vehicle is remanufactured and includes used parts.

(h) Disclose to the dealer on a document signed by the dealer that the vehicle is remanufactured and contains used parts.

### **Violation of Engine Manufacturer Labeling Requirement**

11713.9 (a) It is unlawful and a violation of this code for the holder of a dealer's license to knowingly display for sale or offer for sale any new motor vehicle specified in subdivision (b) with an engine manufactured by a manufacturer that is not the same as the vehicle manufacturer, as defined in Section 9980, unless the vehicle is prominently labeled as specified in Section 9981.

(b) This section applies only to new passenger vehicles and to new motortrucks with an unladen weight under 6,000 pounds, except housecars.

### **Selling Low-Speed Vehicle**

11713.10. It is unlawful and a violation of this code to sell a low-speed vehicle, as defined in Section 385.5, without disclosing to the buyer the vehicle's maximum speed and the potential risks of driving a low-speed vehicle.

### **Disclosures in Advertisement of Vehicle to be Auctioned; Buyer's Fee Requirements**

11713.11. (a) When advertising one or more specific auction events to the public, it is unlawful for a dealer licensed under this article to advertise that a vehicle will be auctioned to the public unless all of the following information is clearly and conspicuously disclosed in the advertisement:

(1) The date or the day of the week of the public auction, or if subdivision (b) applies to the auction, the date of the public auction.

(2) The location of the public auction.

(3) Whether a fee will be charged to attend the auction.

(4) The name and dealer number of the auctioning dealer.

(b) If vehicles seized by a federal, state, or local public agency or authority are being advertised, it is unlawful for a dealer licensed under this article to advertise that a vehicle will be auctioned to the public unless, in addition to the information required by subdivision (a), the following information is clearly and conspicuously disclosed in the advertisement:

(1) A good faith estimate of the number of vehicles to be auctioned at that date.

(2) A good faith estimate of the number of vehicles seized by a federal, state, or local public agency or authority to be auctioned at that date.

(c) Fail, on the day of auction, to identify each vehicle seized by a federal, state, or local public agency or authority, either in a printed catalog or orally, before bidding begins on the vehicle.

(d) Include in the total price of an auctioned vehicle any costs to the purchaser at the completion of the sale, except the accepted auction bid price, taxes, vehicle registration fees, any

charge for emission testing, not to exceed fifty dollars (\$50), plus the actual fees charged to a consumer for a certificate pursuant to Section 44060 of the Health and Safety Code, any dealer document preparation charge not exceeding forty-five dollars (\$45), and any buyer's fee.

(e) Charge a buyer's fee, unless the dealer conducting the auction delivers to any person permitted to submit bids, and at a time prior to accepting any bids from that person, a disclosure statement required by this subdivision and signed by that person. The disclosure statement, if the buyer's fee is a set amount, shall disclose the amount of the fee, or if the buyer's fee is not a set amount, disclose the formula or percentage used to calculate the fee. The disclosure statement shall be on a separate 8 ½ x 11 inch sheet of paper. Except for the information set forth in this subdivision, the disclosure statement shall not contain any other text, except as necessary to identify the dealer conducting the auction sale and to disclose the amount, percentage, or formula used to calculate the buyer's fee, and to provide for the date and the person's acknowledgment of receipt. The heading shall be printed in no smaller than 24-point bold type and the text of the statement shall be printed in no smaller than 12-point type and shall read substantially as follows:

#### **BUYER'S FEE REQUIRED**

A buyer's fee is an amount charged by the auctioning dealer for conducting the auction sale. If your bid price is accepted as the winning bid on any vehicle, you will be charged a buyer's fee in addition to the accepted bid price.

The buyer's fee that will be added to your accepted bid price is \$\_\_\_\_\_.

OR

The buyer's fee that will be added to your accepted bid price will be calculated as follows (insert percentage or other formula for calculating the buyer's fee):

The buyer's fee is part of the purchase price and is subject to sales tax.

Date: \_\_\_\_\_ Signature of Bidder \_\_\_\_\_

(f) Fail to comply with or violate this chapter, Title 2.95 (commencing with Section 1812.600) of Part 4 of Division 3 of the Civil Code, Section 2328 of the Commercial Code, or Section 535 of the Penal Code, or any law administered by the State Board of Equalization, relating to the auctioneering business, including, but not limited to, sales and the transfer of title of goods.

(g) For purposes of this section, a "buyer's fee" is any amount that is in addition to the accepted auction bid price, taxes, vehicle registration fees, certificate of compliance or noncompliance fee, or any dealer document preparation charge, which is charged to a purchaser by an auctioning dealer.

#### **Decal for Returned Vehicle Being Sold**

11713.12. (a) The decal required by subdivision (c) of Section 1793.23 of the Civil Code to be affixed by a manufacturer to a motor vehicle, shall be affixed to the left front doorframe of the vehicle, or, if the vehicle does not have a left front doorframe, it shall be affixed in a location designated by the department. The decal shall specify that title to the motor vehicle has been inscribed with the notation "Lemon Law Buyback" and shall be affixed to the vehicle in a manner prescribed by the department.

(b) No person shall knowingly remove or alter any decal affixed to a vehicle pursuant to subdivision (a), whether or not licensed under this code.

**Purchaser's Rights and Remedies Against Dealer at Auction; Indemnification of Dealer by Owner of Consigned Vehicle; Waiver**

11713.14. (a) Notwithstanding any other provision of law, a person who purchases a vehicle that is sold through a dealer at an auction of vehicles open to the general public shall have the same rights and remedies against the dealer who conducts the auction sale as if that dealer were the owner and seller of the auctioned vehicle. The purchaser's rights and remedies are in addition to any right or remedy he or she may have against an owner of a vehicle sold at a public auto auction.

(b) If any claim or action is filed against a dealer pursuant to subdivision (a) and the vehicle that is the subject of the claim or action was owned by a person other than the dealer at the time of sale by auction, the owner of the vehicle that consigned it to the dealer shall indemnify the dealer for any liability resulting from misrepresentations or other misconduct by the consignor.

(c) A purchaser's rights and remedies under this section may not be waived or modified by an agreement or by a recharacterization of the sales transaction.

**Temporary Branch License for Sale of New Recreational Vehicles; Disclosures**

11713.15. (a) (1) Prior to being issued a temporary branch license for selling new recreational vehicles, as defined in Section 18010 of the Health and Safety Code, at a show, a dealer shall submit to the department a manufacturer's written authorization for the sale specifying the dates of the show, the location of the show, and the makes of those new recreational vehicles being offered for sale.

(2) If nine or fewer dealers are participating in the show, a temporary branch license may only be issued to a dealer under this subdivision if the location of the show is 50 miles or less from that dealer's established place of business or permanent branch location.

Each dealer described in this paragraph shall certify in his or her application for a temporary branch license that the show location is 50 miles or less from his or her established place of business or permanent branch location.

(3) A temporary branch license may be issued to a dealer for purposes of participating in a show if all of the following conditions exist:

(A) The location of the show is 50 miles or more from the dealer's place of business or that dealer's branch locations, or both.

(B) Ten or more dealers apply for temporary branch licenses for purposes of participating in that show.

(C) Not less than 10 days prior to the conduct of the show, the department receives at least 10 applications for temporary branch licenses together at one of the department's field offices.

(b) (1) Any advertising and promotional materials designed to attract the public to attend a show of recreational vehicles where there are nine or fewer dealers participating shall include the business name of each participating dealer and that dealer's established place of business in a type size that is equivalent to the second largest type used in the advertisement or promotional materials. This information shall be placed at the top of any advertisement or promotional



materials.

(2) If the recreational vehicles being offered for sale are used, the word “used” shall immediately precede the identification of the make of the vehicle or be immediately adjacent to the depiction of any used vehicles.

(3) In addition, the promoters of the show shall cause a sign to be conspicuously displayed at the major, public entrance leading directly to the show, printed in 50 point type, containing the information required in paragraph (1).

(c) A recreational vehicle dealer participating in a show for which a temporary branch license is required shall provide each buyer, prior to the sale of any vehicle at the show, a written statement disclosing the identity and the established business location of the dealer that has agreed to render service or warranty work with respect to the vehicle being purchased by the buyer, and if there is no agreement with any dealer to render the service or warranty, to state that fact.

(d) Paragraphs (2) and (3) of subdivision (a) and subdivision (b) do not apply to a dealer participating in an annual show sponsored by a national trade association of recreational vehicle manufacturers, the show is located in a county with a population of 6,000,000 or more persons, and at least 25 manufacturers are participating in the show, and, if the dealer is otherwise eligible to participate in the show, the department shall issue a temporary branch license if all the following occur:

(1) A national trade association of recreational vehicle manufacturers submits a letter to the department that certifies its status as a national trade association of recreational vehicle manufacturers and specifies the dates and location of the show.

(2) Upon receipt of the letter from a national trade association described in paragraph (1) notifying the department of the dates and location of the show, the department provides written acknowledgment to the national trade association submitting the letter.

(3) Each dealer participating in the show attaches a copy of the department letter described in paragraph (2) to the application for a temporary branch license submitted to the department.

### **Unlawful Acts**

11713.16. It is a violation of this code for the holder of any dealer’s license issued under this article to do any of the following:

(a) Advertise any used vehicle of the current or prior model-year without expressly disclosing the vehicle as “used,” “previously owned,” or a similar term that indicates that the vehicle is used, as defined in this code.

(b) Use the terms “on approved credit” or “on credit approval” in an advertisement for the sale of a vehicle unless those terms are clearly and conspicuously disclosed and unabbreviated.

(c) Advertise an amount described by terms such as “unpaid balance” or “balance can be financed” unless the total sale price is clearly and conspicuously disclosed and in close proximity to the advertised balance.

(d) Advertise credit terms that fail to comply with the disclosure requirements of Section 226.24 of Title 12 of the Code of Federal Regulations. Advertisements of terms that include escalated payments, balloon payments, or deferred downpayments shall clearly and conspicuously identify those payments as to amounts and time due.

(e) Advertise as the total sales price of a vehicle an amount that includes a deduction for a rebate. However, a dealer may advertise a separate amount that includes a deduction for a rebate provided that the advertisement clearly and conspicuously discloses, in close proximity to the amount advertised, the price of the vehicle before the rebate deduction and the amount of the rebate, each so identified.

(f) Advertise claims such as “everyone financed,” “no credit rejected,” or similar claims unless the dealer is willing to extend credit to any person under any and all circumstances.

(g) Advertise the amount of any downpayment unless it represents the total payment required of a purchaser prior to delivery of the vehicle, including any payment for sales tax or license. Statements such as “\$\_\_\_\_\_ delivers,” “\$\_\_\_\_\_ puts you in a new car” are examples of advertised downpayments.

(h) Advertise the price of a new vehicle or class of new vehicles unless the vehicle or vehicles have all of the equipment listed as standard by the manufacturer or distributor or the dealer has replaced the standard equipment with equipment of higher value.

(i) Fail to clearly and conspicuously disclose in an advertisement for the sale of a vehicle any disclosure required by this code or any qualifying term used in conjunction with advertised credit terms. Unless otherwise provided by statute, the specific size of disclosures or qualifying terms is not prescribed.

### **Issuance of License; Sales at Wholesale and Retail**

11714. (a) The department, upon granting a license, shall issue to the applicant a license containing the applicant’s name and address and the general distinguishing number assigned to the applicant.

(b) A dealer shall not sell any vehicle at retail at a location that is not posted pursuant to Section 11709.

(c) A dealer who is authorized by the department to sell motor vehicles only at wholesale shall not sell any vehicle at retail and shall report every sale to the department on the wholesale report of sale form prescribed by the department.

(d) When the department has issued a license pursuant to subdivision (a), the licensee may apply for and the department shall issue special plates which shall have displayed thereon the general distinguishing number assigned to the applicant. Each plate so issued shall also contain a number or symbol identifying the plate from every other plate bearing a like general distinguishing number.

(e) The department shall also furnish books and forms as it may determine necessary. Such books and forms are and shall remain the property of the department and may be taken up at any time for inspection.

### **Operation of Vehicles Displaying Special Plates**

11715. (a) A manufacturer, remanufacturer, distributor, or dealer owning or lawfully possessing any vehicle of a type otherwise required to be registered under this code may operate or move the vehicle upon the highways without registering the vehicle upon condition that any the vehicle display special plates issued to the owner as provided in this chapter, in addition to other license plates or permits already assigned and attached to the vehicle in the manner prescribed in Sections 5200 to 5203, inclusive. A vehicle for sale or lease by a dealer may also be operated or moved upon the highways without registration for a period not to exceed seven days

by a prospective buyer or lessee who is test-driving the vehicle for possible purchase or lease, if the vehicle is in compliance with this condition. The vehicle may also be moved or operated for the purpose of towing or transporting by any lawful method other vehicles.

(b) A transporter may operate or move any owned or lawfully possessed vehicle of like type by any lawful method upon the highways solely for the purpose of delivery, upon condition that there be displayed upon each vehicle in contact with the highway special license plates issued to the transporter as provided in this chapter, in addition to any license plates or permits already assigned and attached to the vehicle in the manner prescribed in Sections 5200 to 5203, inclusive. The vehicles may be used for the purpose of towing or transporting by any lawful method other vehicles when the towing or transporting vehicle is being delivered for sale or to the owner thereof.

(c) This section does not apply to any manufacturer, remanufacturer, transporter, distributor, or dealer operating or moving a vehicle as provided in Section 11716.

(d) This section does not apply to work or service vehicles owned by a manufacturer, remanufacturer, transporter, distributor, or dealer. This section does not apply to vehicles owned and leased by dealers, except those vehicles rented or leased to vehicle salespersons in the course of their employment for purposes of display or demonstration, nor to any unregistered vehicles used to transport more than one load of other vehicles for the purpose of sale.

(e) This section does not apply to vehicles currently registered in this state which are owned and operated by a licensed dealer when the notice of transfer has been forwarded to the department by the former owner of record pursuant to Section 5900 and when a copy of the notice is displayed as follows:

(1) For a motorcycle or motor-driven cycle, the notice is displayed in a conspicuous manner upon the vehicle.

(2) For a vehicle other than a motorcycle or motor-driven cycle, the notice is displayed in the lower right-hand corner of the windshield of the vehicle, as specified in paragraph (3) of subdivision (b) of Section 26708.

(f) Every owner, upon receipt of a registration card issued for special plates, shall maintain the same or a facsimile copy thereof with the vehicle bearing the special plates.

### **Operation of Vehicle Without Plates**

11716. A manufacturer, remanufacturer, transporter, distributor, or dealer, in the course of business, may operate or move any vehicle of a type otherwise required to be registered under this code without registering the vehicle, and without license or special plates attached thereto, from a vessel, railroad depot, or warehouse over the highways to a warehouse or salesroom upon first having obtained a written permit from the department authorizing that operation.

### **Expiration of Special Plates and License; Application for License Renewal**

11717. (a) Every occupational license and special plate issued under this article shall be valid for a period of one year from midnight of the last day of the month of issuance. Except as provided in subdivision (c), renewal of the occupational license and special plates for the ensuing year may be obtained by the person to whom the occupational license and special plates were issued upon application to the department and payment of the fee provided in this code.

(b) Every application for the renewal of an occupational license and special plates which expire pursuant to this section shall be made by the person to whom issued not more than 90 days

prior to the expiration date, and shall be made by presenting the completed application form provided by the department and by payment of the full annual renewal fee for the occupational license and special plates.

(c) If the application for renewal of the occupational license and special plates is not made by midnight of the expiration date, the application may be made within 30 days following expiration of the license by paying the annual renewal fee and a penalty fee equal to the amount of the original application fee for each occupational license held. A penalty as specified in Sections 9553 and 9554 shall also be added to each special plate renewed during the 30-day period following expiration of the special plates.

(d) In no event may the licensee renew the occupational license or special plates after the expiration of the 30-day period authorized in subdivision (c).

### **Issuance of Probationary License**

11718. Except where the provisions of this code require the refusal to issue a license, the department may issue a probationary license subject to conditions to be observed by the licensee in the exercise of the privilege granted. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license but shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

### **Issuance of Temporary Permit**

11719. Pending the satisfaction of the department that the applicant has met the requirements under this article, it may issue a temporary permit to any person applying for a manufacturer's, manufacturer's branch, remanufacturer's, remanufacturer's branch, distributor's, distributor's branch, transporter's, or dealer's license and special plates. The temporary permit shall permit the operation by the manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer for a period not to exceed 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant to the license and special plates. The department may cancel the temporary permit when it has determined, or has reasonable cause to believe, that the application is incorrect or incomplete or the temporary permit was issued in error. The temporary permit is invalid when canceled or when the applicant's license has been issued or refused.

### **Certificate of Convenience on Death of Licensee**

11720. The department may issue a certificate of convenience to the executor, executrix, administrator or administratrix of the estate of a deceased holder of validly outstanding special plates and license issued under this article, or if no executor, executrix, administrator or administratrix has been appointed, and until a certified copy of an order making such appointment is filed with the department, to the surviving spouse or other heir otherwise entitled to conduct the business of the deceased, permitting such person to exercise the privileges granted by such special plates and license for a period of one year from and after the date of death and necessary one-year renewals thereafter, pending, but not later than, disposal of the business and qualification of the vendee of the business or such surviving spouse, heir or other persons for such special plates and license under the provisions of this article. The department may restrict or

condition the license and attach to the exercise of the privileges thereunder such terms and conditions as in its judgment the protection of the public requires.

### **Automatic Cancellation of Special Plates and Licenses**

11721. The special plates and licenses provided for in this article shall be automatically canceled upon the happening of any of the following:

(a) The abandonment of the established place of business of the dealer or the change thereof without notice to the department as provided in Section 11712.

(b) The failure of the licensee to maintain an adequate bond or to procure and file another bond as provided in Section 11710 prior to the effective date of the termination by the surety of any existing bond.

(c) The voluntary or involuntary surrender for any cause by the licensee of the special plates and license, except that the surrender of the special plates and license, the cessation of business by the licensee, or the suspension or revocation of the corporate status of the licensee, does not preclude the filing of an accusation for revocation or suspension of the surrendered license as provided in Section 11705, does not affect the department's decision to suspend or revoke the license. The department's determination to suspend or revoke the license may be considered in issuing or refusing to issue any subsequent license authorized by this division to that licensee or to a business representative of that prior licensee.

(d) Notification to the department that the person designated as licensee has changed, except that the special plates issued to the original licensee may be transferred and the newly designated licensee as transferee shall succeed to the privileges evidenced by the plates until their expiration.

(e) The suspension or revocation of the corporate status of the licensee.

(f) The suspension or revocation of the seller's permit of the licensee by the State Board of Equalization.

### **Financing Agency**

11722. Claims, against the surety upon a dealer's bond, of a financing agency that has loaned money to a licensee or assignee thereof shall be allowed only to the extent that the claims of any other person or entity with respect to the bond under Section 11711 shall be satisfied first and entitled to preference over the claims of the financing agency with respect to the bond ; provided, however, that as to any conditional sales contract as defined in Section 2981 of the Civil Code, acquired by way of purchase or pledge, a financing agency shall be entitled to protection under the bond with the same preference set forth under Section 11711 if the financing agency is defrauded by a licensee.

### **License Fees**

11723. The board may require that fees shall be paid to the department for the issuance or renewal of a license to do business as a new motor vehicle dealer, dealer branch, manufacturer, manufacturer branch, distributor, distributor branch, or representative. The fees shall be to reimburse the department for costs incurred in licensing those dealers, manufacturers, distributors, branches, and representatives and for related administrative costs incurred on behalf of the board. The board may also require that an additional fee be paid to the department when the licensee has failed to pay the fee authorized by Section 3016 prior to the expiration of its

occupational license and special plates and the licensee utilizes the 30-day late renewal period authorized by subdivision (c) of Section 11717.

This section shall not apply to dealers, manufacturers, distributors, or representatives of vehicles not subject to registration under this code, except dealers, manufacturers, manufacturer branches, distributors, distributor branches, or representatives of off-highway motorcycles, as defined in Section 436.

### **Removal of Motor Vehicle to Foreign Jurisdiction for Registration or Sale; Removal of License Plates**

11725. (a) No person shall transport or drive any motor vehicle from this state outside of the United States with the intent to register or sell such vehicle in a foreign jurisdiction, without first removing the license plates and delivering them to the department. Such person may obtain a permit from the department authorizing the operation of the unlicensed motor vehicle on the public highways of this state in order to reach such foreign jurisdiction. Failure to deliver the license plates as required by this section shall be a misdemeanor.

(b) No holder of any license, or any temporary permit for such license issued under this division, shall deliver any vehicle following sale without first removing all license plates from such vehicle when it is known by the licensee that the vehicle is to be exported to a foreign jurisdiction outside of the United States.

### **Recovery of Damages; Injunctive Relief**

11726. Any licensee suffering pecuniary loss because of any willful failure by any other licensee to comply with any provision of Article 1 (commencing with Section 11700) or 3 (commencing with Section 11900) of Chapter 4 of Division 5 or Article 3 (commencing with Section 3052) of Chapter 6 of Division 2 or with any regulation adopted by the department or any rule adopted or decision rendered by the board under authority vested in them may recover damages and reasonable attorney fees therefor in any court of competent jurisdiction. Any such licensee may also have appropriate injunctive relief in any such court.

### **Revocation or Suspension of License**

11727. The revocation or suspension of a license of a manufacturer, manufacturer branch, distributor, distributor branch, or representative may be limited to one or more municipalities or counties or any other defined area, or may be revoked or suspended in a defined area only as to certain aspects of its business, or as to a specified dealer or dealers.

### **Penalties as Part of Compromise Settlement Agreement**

11728. As part of a compromise settlement agreement entered into pursuant to Section 11707 or 11808.5, the department may assess a monetary penalty of not more than two thousand five hundred dollars (\$2,500) per violation and impose a license suspension of not more than 30 days for any dealer who violates subdivision (r) of Section 11713. The extent of the penalties shall be based on the nature of the violation and effect of the violation on the purposes of this article. Except for the penalty limits provided for in Sections 11707 and 11808.5, all the provisions governing compromise settlement agreements for dealers, salespersons, and wholesalers apply to this section, and Section 11415.60 of the Government Code does not apply.

### **Consignment Agreement Required**

11729. (a) Except as provided in subdivision (b), any dealer engaging in a consignment with an owner not licensed as a dealer, manufacturer, manufacturer branch, distributor, or a distributor branch licensed under this code, and the consignment is not otherwise prohibited by this code, shall execute a consignment agreement as prescribed by Section 11730. The failure of a dealer, when required under this section, to complete and comply with the terms of the prescribed consignment agreement for any vehicle which the dealer agrees to accept on consignment, or to pay the agreed amount to the consignor or his or her designee within 20 days after the date of sale of the vehicle, is cause for suspending or revoking the license of the dealer under paragraph (10) of subdivision (a) of Section 11705.

(b) (1) A dealer conducting retail auction sales on behalf of a fleet owner shall execute a consignment agreement applicable to all vehicles consigned for sale during the term of the agreement which contains, at a minimum, substantially all of the terms, phrases, conditions, and disclosures required by Section 11730, except the following are not required:

(A) The description of a specific vehicle by year, make, identification number, license, state, or mileage.

(B) The information contained in paragraph (4) of subdivision (b) of Section 11730.

(2) If mutually agreeable, in lieu of the requirements of paragraph (7) of subdivision (b) of Section 11730, the consignor may provide the documents necessary to transfer the ownership of the vehicle to the consignee prior to the auction being held.

(3) For purposes of this subdivision, "fleet owner" is either of the following:

(A) A person who is the registered or legal owner of 25 or more vehicles registered in this state and is the owner, as recorded in the department's records, of the vehicles consigned for sale to the dealer.

(B) A bankruptcy trustee who owns or has legal control of the vehicles consigned for sale to the dealer, government agency, or financial institution.

### **Consignment Agreement: Requirements**

11730. The consignment agreement required by Section 11729 shall contain all the following terms, phrases, conditions, and disclosures:

(a) The date the agreement is executed.

(b) All of the following statements:

(1) "I (We), the undersigned consigner(s), hereby consign and deliver possession of my(our) vehicle, which is a (Year) \_\_\_\_ (Make) \_\_\_\_ (ID#) \_\_\_\_ (License) \_\_\_\_ (State) \_\_\_\_ (Mileage) \_\_\_\_, to (Consignee) \_\_\_\_ (Dealer #) \_\_\_\_ for the sole purpose of selling the vehicle and paying, to the consignor or his or her designee from the proceeds of the sale of the vehicle, the amount agreed upon under terms of this agreement. This agreement is effective and valid only for a period of \_\_\_\_ days from this date."

(2) "At the termination of this agreement, the consignee shall return the vehicle to the consignor, or, at the option of both the consignor and consignee, enter into a new agreement."

(3) "If the vehicle is sold by the consignee during the term of this agreement, the money due the consignor shall be disbursed within 20 days after the date of sale in accordance with the terms of this agreement. As used in this agreement, a "sale" occurs when the consignee either (A) receives the purchase price or its equivalent or executes a conditional sales contract for the vehicle, or (B) when the purchaser takes delivery of the vehicle, whichever occurs first."

(4) "The following information shall be completed prior to the signing of this agreement:

Current market value: \$\_\_\_\_ Source: \_\_\_\_.

Outstanding liens: \$\_\_\_\_ Lienholder: \_\_\_\_.

(Any difference between the outstanding amount shown and the actual payoff to the lienholder will be credited to the consignor.)

Repairs to be made: \$\_\_\_\_ Work Order #\_\_\_\_.

Moneys to the consignor: \_\_\_\_ percent of sale price, flat fee of \$\_\_\_\_ or the following specific formula: \_\_\_\_."

(5) "Within 20 days after sale, the consignee shall make an accounting to the consignor of all of the following: date of sale, repairs authorized by consignor (supported by work records), exact amount of any liens payable to lienholders, evidence of payment of any liens, and the total sales price."

(6) "The consigned vehicle is delivered to the consignee in trust for the exact terms set forth in this agreement. The consignee agrees to receive this vehicle in trust and not to permit its use for any other purpose other than contained in this agreement without the express written consent of the consignor."

(7) "Upon payment of the moneys due the consignor, the consignor agrees to furnish the consignee those documents necessary to transfer the ownership of the vehicle to the purchaser.

Signatures:

Consignor	Date
Address	
Consignee	Date
Address"	

(8) "NOTICE TO CONSIGNOR: Failure of the consignee to comply with the terms of this agreement may be a violation of statute which could result in criminal or administrative sanctions, or both. If you feel the consignee has not complied with the terms of this agreement, please contact an investigator of the Department of Motor Vehicles."

#### **Autobroker's Endorsement to Dealer's License**

11735. (a) No dealer shall engage in brokering a retail sales transaction without first paying the fee required by subdivision (d) of Section 9262 and obtaining from the department an autobroker's endorsement to the dealer's license. An autobroker's endorsement shall be automatically cancelled upon the cancellation, suspension, revocation, surrender, or expiration of a dealer's license.

(b) Upon the issuance of an autobroker's endorsement to a dealer's license, the department shall furnish the dealer with an autobroker's log. The autobroker's log shall remain the property of the department and may be taken up at any time for inspection.

(c) The autobroker's log shall contain spaces sufficient for the dealer to record the following information with respect to each retail sale brokered by that dealer:

(1) Vehicle identification number of brokered vehicle.



- (2) Date of brokering agreement.
- (3) Selling dealer's name, address, and dealer number.
- (4) Name of consumer.
- (5) Brokering dealer's name and dealer number.

(d) Nothing in this code prohibits a dealer who has been issued an autobroker's endorsement to his or her dealer's license from delivering, with the selling dealer's written approval, motor vehicles that have been sold pursuant to a duly executed motor vehicle purchase agreement or obtaining a consumer's signature on a selling dealer's motor vehicle purchase agreement that has already been executed by the selling dealer.

(e) When brokering a retail sale as an agent of the consumer, selling dealer, or both, the brokering dealer owes a fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with its principal or principals.

(f) For purposes of this section and Sections 11736, 11737, and 11738, "consumer" means any person who retains a dealer to perform brokering services in connection with a retail sale.

### **Brokering: Unlawful Acts**

11736. It is unlawful for any dealer licensed under this article to do any of the following when brokering a retail sale:

(a) Fail to execute a written brokering agreement, as described in Section 11738, and provide a completed copy to both of the following:

(1) Any consumer entering into the brokering agreement. The completed copy shall be provided prior to the consumer's signing of an agreement for the purchase of the vehicle described in the brokering agreement or, prior to accepting one hundred dollars (\$100) or more from that consumer, whichever occurs first.

(2) The selling dealer. The completed copy shall be provided prior to the selling dealer's entering into a purchase agreement with the consumer.

(b) Accept a purchase deposit from any consumer that exceeds 2.5 percent of the selling price of the vehicle described in the brokering agreement.

(c) Fail to refund any purchase money, including purchase deposits, upon demand by a consumer at any time prior to the consumer's signing of a vehicle purchase agreement with a selling dealer and taking delivery of the vehicle described in the brokering agreement.

(d) Fail to cancel a brokering agreement and refund, upon demand, any money paid by a consumer, including any brokerage fee, under any of the following circumstances:

(1) When the final price of the brokered vehicle exceeds the purchase price listed in the brokering agreement.

(2) When the vehicle delivered is not as described in the brokering agreement.

(3) When the brokering agreement expires prior to the customer being presented with a purchase agreement from a selling dealer arranged through the brokering dealer that contains a purchase price at or below the price listed in the brokering agreement.

(e) Act as a seller and provide brokering services, both in the same transaction.

(f) Fail to disclose to the consumer and selling dealer, as soon as practicable, whether the autobroker receives or does not receive a fee or other compensation, regardless of the form or time of payment, from the selling dealer and the dollar amount of any fee that the consumer is

obligated to pay to the autobroker. This arrangement shall be confirmed in a brokering agreement.

(g) Fail to record in the dealer's autobroker log, for each brokered sale, all of the information specified in subdivision (c) of Section 11735.

(h) Fail to maintain for a minimum of three years a copy of the executed brokering agreement and other notices and documents related to each brokered transaction.

(i) Fail to advise the consumer, prior to accepting any money, that a full refund will be given if the motor vehicle ordered through the autobroker is not obtained for the consumer or if the service orally contracted for is not provided.

### **Brokering: Purchase Deposits: Trust Account**

11737. (a) A dealer who brokers a motor vehicle sale shall deposit directly into a trust account any purchase money, including purchase deposits, it receives from a consumer or a consumer's lender. This subdivision does not require a separate trust account for each brokered transaction.

(b) The brokering dealer shall not in any manner encumber the corpus of the trust account except as follows:

(1) In partial or full payment to a selling dealer for a vehicle purchased by the brokering dealer's consumer.

(2) To make refunds.

(c) Subdivision (b) shall not prevent payment of the interest earned on the trust account to the brokering dealer.

(d) The brokering dealer shall serve as trustee of the trust account required by this section.

If the brokering dealer is a

partnership or a corporation, the managing partner of the partnership or the chief executive officer of the corporation shall be the trustee. The trustee may designate in writing that an officer or employee may manage the trust account if that officer or employee is under the trustee's supervision and control, and the original of that writing is on file with the department.

(e) All trust accounts required by this section shall be maintained at a branch of a bank, savings and loan association, or

credit union regulated by the state or the government of the United States.

(f) The brokering dealer has a fiduciary responsibility with respect to all purchase money received from a consumer or consumer's lender relative to a brokered sale transaction.

(g) The following are deemed to be held in trust for consumers who have paid purchase money to a brokering dealer:

(1) All sums received by the brokering dealer whether or not required to be deposited in an actual trust account and regardless of whether any of these sums were required to be deposited or actually were deposited in a trust account.

(2) All property with which any of the sums described in paragraph (1) has been commingled if any of these sums cannot be identified because of the commingling.

(h) Upon any judicially ordered distribution of any money or property required to be held in trust and after all expenses of distribution approved by the court have been paid, every consumer of a brokering dealer has a claim on the trust for purchase money payments made to the brokering dealer. Unless a consumer can identify his or her funds in the trust within the time established by the court, each consumer shall receive a proportional share based on the amount paid.

**Brokering Agreement: Form and Contents**

11738. The brokering agreement required by Section 11736 shall be printed in no smaller than 10-point type and shall contain not less than the following terms, conditions, requirements, and disclosures:

- (a) The name, address, license number, and telephone number of the autobroker.
- (b) A complete description, including line-make, model, year model, and color, of the vehicle and the desired options.
- (c) The following statement: “The following information shall be completed prior to the signing of this brokering agreement:  
Dollar Purchase Price of Vehicle: \_\_\_\_\_.  
Date this agreement will expire if a purchase agreement from a selling dealer is not presented for your signature: \_\_\_\_\_.  
Fee that you will be obligated to pay us, if any: \_\_\_\_\_.”
- (d) One of the following notices, as appropriate, printed in at least 10-point bold type and placed immediately below the statement required by subdivision (c):
  - (1) “We do not receive a fee from the selling dealer.”
  - (2) “We receive a fee from the selling dealer.”
- (e) The following notice on the face of the brokering agreement with a heading in at least 14-point bold type and the text in at least 10-point bold type, circumscribed by a line, that reads as follows:

---

**NOTICE**

This is an agreement to provide services; it is not an agreement for the purchase of a vehicle. California law gives you the following rights and protection:

Once you have signed this agreement, you have the right to cancel it and receive a full refund of any money paid, including any brokerage fee you may have paid, under any of the following circumstances:

- (1) The final price of the vehicle exceeds the purchase price listed above.
- (2) The vehicle is not as described above upon delivery.
- (3) This agreement expires prior to your being presented with a selling dealer’s purchase agreement.

If you have paid a purchase deposit, you have the right to receive a refund of that deposit at any time prior to your signing a vehicle purchase agreement with a selling dealer. Purchase deposits are limited by law to no more than 2.5 percent of the purchase price of a vehicle and must be deposited by an autobroker or auto buying service in a federally insured trust account. If you are unable to resolve a dispute with your autobroker or auto buying service, please contact an investigator of the Department of Motor Vehicles.

- 
- (f) The date the agreement is executed.
  - (g) The signature of the autobroker and consumer.

**Brokered Retail New Motor Vehicle Sale: Dealer and Manufacturer Responsibilities**

11739. For purposes of title registration, warranties, rebates, and incentives, in a brokered retail new motor vehicle sale, the selling, franchised new car dealer, and not the autobroker, is

responsible to apply for title in the name of the purchaser, to secure vehicle registration and the license plates for the purchaser, to secure the manufacturer's warranty in the name of the purchaser, and to make all applications for any manufacturer's rebates and incentives due the purchaser. If there is a manufacturer's recall, the consumer shall be notified directly by the manufacturer.

**Remedies and Penalties: Cumulative**

11740. The remedies and penalties provided in this code for a violation of this article are cumulative to the remedies and penalties provided by other laws.

**Appendix II:  
California Code of  
Regulations**

**CALIFORNIA CODE OF REGULATIONS**

**Title 13. Motor Vehicles**

**Division 1. Department of Motor Vehicles**

**Chapter 2. New Motor Vehicle Board**

***Article 1. Administration***

**550. Definitions.**

For the purposes of these rules:

- (a) "Board" means the New Motor Vehicle Board.
- (b) "Department" means the Department of Motor Vehicles of the State of California.
- (c) "Director" means the director of the department.
- (d) "Executive Director" means the executive director of the board.
- (e) Unless otherwise designated, the words "respondent," "appellant" or "party" mean the real party in interest.
- (f) "Party" includes the petitioner, respondent, department, appellant or director.
- (g) "Petitioner" means any person including a board member seeking consideration by the board under subsection (c) of Section 3050 of the Vehicle Code of a matter involving a person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative.
- (h) "Respondent" means any licensed new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as defined in Sections 426, 672, 389, 296, 297 and 512, respectively, of the Vehicle Code.
- (i) "Manufacturer" means any new motor vehicle manufacturer or manufacturer branch required to be licensed pursuant to Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code.
- (j) "Distributor" means any new motor vehicle distributor or distributor branch required to be licensed pursuant to Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code.

**550.10. Application of Subchapter.**

Application of this Subchapter is subject to the limitations as set forth in Section 3051 of the Vehicle Code.

**551. Authority.**

The powers and duties of this board are set forth in Chapter 6 (commencing at Section 3000) of Division 2 of the Vehicle Code. Persons having matters to be considered by the board, or appeals to the board from actions or decisions of the Department of Motor Vehicles should refer to said Vehicle Code provisions under which these rules are adopted to govern procedural matters of the board. Reference is also made to the General Provisions of the Vehicle Code

(commencing at Section 1), and Division 1 thereof (commencing at Section 100), and to the provisions of Chapter 5, Division 3, Title 2 of the Government Code (commencing with Section 11500 thereof).

#### **551.1. Challenge.**

An administrative law judge or board member shall voluntarily disqualify himself and withdraw from any hearing or deliberation in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of any administrative law judge or board member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the request concerns a board member, the issue shall be determined by the other members of the board. Where the request concerns the administrative law judge, the issue shall be determined by the board if the board itself hears the case with the administrative law judge, otherwise the issue shall be determined by the administrative law judge.

#### **551.2. Subpoenas.**

(a) Upon the request of any party, the executive director may, and at the direction of the board the executive director shall, issue a subpoena for the attendance of any person before the board, for the attendance and testimony of a deponent, or a subpoena duces tecum for the production of papers, records, and books by a witness or a deponent.

(b) The issuance of a subpoena for the attendance and testimony of a witness or for a subpoena duces tecum for the production of papers, records, and books for hearing shall be governed by the requirements set forth in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil Procedure, excepting the provisions of subsection (c) of Section 1985, of that code. A copy of an affidavit shall be served with a subpoena duces tecum for hearing containing the information required by Code of Civil Procedure Section 1985(b).

(c) The issuance of a subpoena for the attendance and testimony of a non-party deponent or for a subpoena duces tecum for the production of papers, records, and books for deposition of a non-party shall be governed by the requirements set forth in Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure, excepting the provisions of subsection (b) of Section 2020, of that code. A subpoena duces tecum issued to a non-party deponent need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it.

(d) Following service of the subpoena upon the witness or deponent, the original subpoena and an executed proof of service shall be filed with the Board.

#### **551.6. Testimony by Deposition.**

On verified petitions of any party, the board may order that the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed by law for depositions in civil actions. Petition shall set forth the nature of the pending proceedings; the name and address of the witness whose testimony is desired; the showing of the materiality of his testimony; a showing that the witness shall be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. Where the witness resides outside the state and where the board has ordered the taking of his testimony by deposition, the board shall obtain an order of court to that effect by

filing a petition therefore in the Superior Court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189 of the Government Code.

**551.7. Reporting of Proceedings.**

The board may, at its discretion, assign the cost of reporting any proceedings before the board, including, but not limited to, transcript fees, reporter's per diem costs, exhibits, pleadings, and reproduction of board files as follows:

(a) Allocated entirely to one of the parties; or apportioned among the various parties at the discretion of the board; or

(b) Assumed by the board, in whole or in part.

**551.8. Dismissals of Petitions, Appeals, and Protests**

(a) The board may, at its discretion, dismiss a petition for good cause shown. Good cause may include, but shall not be limited to, failure by the petitioner to comply with any of the following sections of Article 2: 554, 555, 556.

(b) The board may, at its discretion, dismiss an appeal from decisions of the department for good cause shown. Good cause may include, but shall not be limited to failure by the appellant to comply with any of the following sections of Article 3: 566, 567, 568, 569, 570, 571(a), 571(b), 571(d), 572(a), 572(b), 572(c), 573(a), 573(d).

(c) The board may, at its discretion, dismiss a protest for good cause shown. Good cause may include, but shall not be limited to, failure by the protestant to comply with any of the following sections of Article 5: 583, 585, 586, 589.

(d) The board may, at its discretion, dismiss a petition, an appeal or a protest, if additional information requested by the board is not supplied within the time specified by the board.

(e) An order of dismissal of a petition, an appeal or a protest shall be a final order pursuant to Vehicle Code sections 3057 or 3067, and no reconsideration or rehearing shall be permitted.

**551.10 Costs for Changes in Venue**

A party to a proceeding before the board may request a change in venue. The board or an administrative law judge designated by the board or its executive director may assess board costs to the requesting party if the requesting party cancels the proceedings at the new location without good cause or sufficient notice to the board to allow the board to avoid costs incurred in changing the venue.

**551.11. Settlement Conference: Separation of Powers**

The administrative law judge at the settlement conference shall not preside at the hearing on the merits or in any proceeding relating to motions for temporary relief or interim orders unless otherwise stipulated by the parties. Nothing in this regulation shall affect or limit the provisions of Vehicle Code § 3050.4.

**551.12. Peremptory Challenge**

A party is entitled to one disqualification without cause (peremptory challenge) of an assigned administrative law judge which will be granted subject to the following:

(a) A party is not entitled to a peremptory challenge in any proceeding relating to applications for temporary relief or interim orders.

(b) The peremptory challenge shall be directed to the executive director of the board (or designee) or the assigned administrative law judge.

(c) The peremptory challenge shall be made by the party, attorney or authorized representative appearing in any proceeding by written declaration consistent with the requirement of subsection (i), below.

(d) Notice of a peremptory challenge shall be served on opposing parties.

(e) If an administrative law judge is assigned 15 days in advance of the hearing, then the peremptory challenge shall be made not later than 5 working days before the hearing. If an administrative law judge is not assigned 15 days in advance of the hearing, then the peremptory challenge shall be made within 10 days of the assignment or at the hearing, whichever occurs first.

(f) Any peremptory challenge by any other party to a subsequently assigned administrative law judge shall be made within 10 days of the assignment or at the hearing, whichever occurs first.

(g) In no event shall any peremptory challenge be entertained if it is made after the commencement of hearing.

(h) Assignments of administrative law judges may be ascertained by contacting the executive director of the board (or designee) no sooner than 15 days in advance of the hearing.

(i) Any declaration filed pursuant to this regulation shall be in substantially the following form:

I,           (name)          , declare: That I am a party (or attorney or authorized representative for a party) to the pending matter. That the administrative law judge assigned to the hearing is prejudiced against the party (or his or her attorney or authorized representative of record) or the interest of the party (or his or her attorney or authorized representative) so that the declarant cannot or believes that he or she cannot have a fair and impartial hearing before the administrative law judge.

This declaration is under penalty of perjury under the laws of the state of California and is signed           (date)           at           (city and state)          .

(j) Unless required for the convenience of the board or unless good cause is shown, a continuance of the hearing shall not be granted by reason of the making of a peremptory challenge. If a continuance is granted, the matter shall be continued to the first convenient day for the board and shall be reassigned or transferred for hearing as promptly as possible. Nothing in this regulation shall affect or limit the provisions of Vehicle Code § 3066(a).

(k) Nothing in this regulation shall affect or limit the provisions of a challenge for cause under Article 1, section 551.1.

### **551.13. Intervention; Grant of Motion; Conditions.**

Any person, including a board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, may file a motion with the executive director of the board (or designee) requesting that the movant be allowed to intervene in a pending proceeding. The motion to intervene may be granted subject to the following:



(a) The motion shall be submitted in writing, with copies served on all parties named in the pending proceeding.

(b) The motion shall be filed as early as practicable in advance of the hearing.

(c) The motion shall state facts demonstrating that the applicant's legal rights, duties, privileges, or immunities will be substantially affected by the proceeding.

(d) The board, its executive director, or an administrative law judge designated by the board or its executive director, shall determine that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

(e) The board, its executive director, or an administrative law judge designated by the board or its executive director, may impose conditions on the intervenor's participation in the proceeding, either at the time that intervention is granted or at a subsequent time. Such conditions shall be at the sole discretion of the board, its executive director, or an administrative law judge designated by the board or its executive director, based on the knowledge and judgment at that time, so as to promote the interests of justice. Conditions include, but are not limited to, the following:

(1) Limiting the intervenor's participation to designated issues;

(2) Limiting or excluding the intervenor's participation in discovery and cross-examination; and

(3) Limiting or excluding the intervenor's participation in settlement negotiations.

(f) The board, its executive director, or an administrative law judge designated by the board or its executive director, shall issue an order granting or denying the motion for intervention as early as practicable in advance of the hearing, specifying any conditions, and briefly stating the reasons for the order. The board, its executive director, or an administrative law judge designated by the board or its executive director, may modify the order at any time by giving notice to all parties, stating the reasons for the modification. The determination of the board, its executive director, or an administrative law judge designated by the board or its executive director, in granting or denying the motion for intervention, or the determination modifying the order previously issued, is not subject to administrative or judicial review. The board, its executive director, or an administrative law judge designated by the board or its executive director, may, in his or her discretion, allow the filing of amicus curiae briefs.

#### **§ 551.14 Request for Informal Mediation.**

(a) Prior to initiating a petition pursuant to section 3050(c) of the Vehicle Code, either party may request that the board mediate any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative.

(b) Participation in informal mediation is voluntary, informal, and nonadversarial.

(c) The request for informal mediation shall set forth the nature of the matter which the board is requested to mediate. The request for informal mediation shall comply substantially with the following requirements:

(1) Include the name, mailing address and telephone number of the person requesting informal mediation; the name, mailing address and telephone number of his or her attorney or authorized agent if any, and the name and address of the licensee or applicant for license whose activities or practices are in question.

(2) Insofar as is known to the person requesting informal mediation, include the names,

residence addresses and business addresses of persons and the dates, places and specific actions or practices involved in the matter.

(3) Describe the relief or disposition of the matter which the person requesting informal mediation would consider acceptable.

(d) A copy of the request for informal mediation shall be served on the licensee or applicant for license whose activities or practices are in question and proof of service (in compliance with Sections 1013(a) and 2015.5, Code of Civil Procedure) thereof shall accompany the request for informal mediation filed with the executive director of the board.

(e) The form of the request for informal mediation shall substantially conform with the provisions of Article 6 hereof.

(f) Article 1, section 553.40 shall apply to all requests for informal mediation.

#### **§ 551.15 Request for Discovery; Informal Mediation.**

For purposes of discovery, the board or its executive director, or an administrative law judge designated by the board or its executive director may, if deemed appropriate and proper under the circumstances, authorize the parties to engage in such discovery procedures as are provided for in civil actions in Article 3 (commencing with Section 2016) and Article 4 (commencing with Section 2037) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure, excepting the provisions of Section 2030 of that code.

#### **§ 551.16 Informal Mediation Process.**

(a) Upon receipt of the request for informal mediation, the Board staff will initiate a conference call with the parties to ascertain whether the licensee or applicant for license whose activities or practices are in question is agreeable to participating in informal mediation.

(b) If the licensee or applicant for license whose activities or practices are in question is not agreeable to participating in informal mediation, either party may request that this matter be converted to a petition proceeding pursuant to Article 1, section 551.17.

(c) If the licensee or applicant for license whose activities or practices are in question is agreeable to participating in informal mediation, a mutually agreeable date for informal mediation will be calendared.

(1) Upon order of the board, and at least five business days prior to participating in informal mediation, the parties shall file and serve a premediation statement which includes a detailed statement of facts, statement of issues, and a realistic proposal for resolving the dispute.

(2) The board, its executive director, or an administrative law judge designated by the board or its executive director, shall preside over the informal mediation.

(3) Evidence set forth in declarations of expert or percipient witnesses made under penalty of perjury may be considered by the board, its executive director, or an administrative law judge designated by the board or its executive director, in his or her discretion.

(4) At any time during informal mediation, either party may request that this matter be converted to a petition proceeding pursuant to Article 1, section 551.17

(5) All communications, negotiations, or settlement discussions by and between participants in the course of informal mediation shall remain confidential.

#### **§ 551.17 Conversion of Informal Mediation to Petition.**

(a) The board or its executive director, upon the request of either party, or upon its own

motion, may convert an informal mediation to a petition under section 3050(c) of the Vehicle Code. The respondent shall be an applicant for or holder of a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor, or representative.

(b) Within 10 days of approval to convert the proceeding, the petitioner shall file and serve a petition with the board which substantially complies with Article 2, section 555 *et seq.*

(c) Upon receipt of the petition, a copy shall be transmitted by the executive director of the board to each member of the board for consideration in accordance with Section 557 hereof.

(d) If the filing fee was paid by both parties in the informal mediation proceeding, no additional filing fee is required for conversion to a petition.

(e) In accordance with Section 558 hereof, the respondent shall file with the executive director of the board a written answer to the petition.

(f) Chapter 6 (commencing with Section 3000) of Division 2 of the Vehicle Code, and Chapter 2 (commencing with Section 550) of Division 1 of Title 13 of the California Code of Regulations shall apply.

(g) Notwithstanding any other provision of law, a communication made in informal mediation is protected to the following extent:

(1) Anything said, any admission made, and any document prepared in the course of, or pursuant to, informal mediation is a confidential communication, and a party to the informal mediation has a privilege to refuse to disclose and to prevent another from disclosing the communication, whether in an adjudicative proceeding, civil action, or other proceeding. This subsection does not limit the admissibility of evidence if all parties to the proceeding consent.

(2) No reference to the informal mediation proceedings, the evidence produced, or any other aspect of the informal mediation may be made in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose.

(3) No informal mediation administrative law judge is competent to testify in a subsequent administrative or civil proceeding as to any statement, conduct, decision, or order occurring at, or in conjunction with, the informal mediation.

(4) Evidence otherwise admissible outside of informal mediation is not inadmissible or protected from disclosure solely by reason of its introduction or use in informal mediation.

## **552. Records.**

(a) Place of Keeping. The records of the board shall be maintained at its principal office at Sacramento in the custody of the executive director. The executive director may certify to any of the board's official acts and may certify copies of all official documents and orders of the board.

(b) Sale of Copies of Records. The executive director shall sell copies of all or any part of the records of the board at a charge sufficient to pay at least the cost of the copies.

(c) Preparation of Certified Copies Without Charge. The board for good cause shown may direct the executive director to certify copies without charge.

## **553. Board Annual Fee.**

(a) Pursuant to Section 11723 of the Vehicle Code, every applicant for a license as a new motor vehicle to all other fees now required by the Vehicle Code.

For the purposes of this section, a dealer or dealer branch which is enfranchised to sell both new motorcycles and new motor vehicles other than motorcycles shall be subject to a

licensing fee for sales of motorcycles and a licensing fee for sales of motor vehicles other than motorcycles.

(b) Pursuant to Section 3016 of the Vehicle Code, every new motor vehicle manufacturer and distributor shall pay to the board an annual fee of \$.338 per new motor vehicle distributed by the manufacturer or distributor which was sold, leased, or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year, provided, however, that the fee to be paid by each manufacturer or distributor shall not be less than \$225.

The board may waive fees for a new motor vehicle manufacturer or distributor licensed in California, based on a determination that the manufacturer or distributor either does not sell vehicles in California or does not have an independent dealer or dealer branch in California.

#### **553.10. Statement of Number of Vehicles Distributed.**

(a) All manufacturers and distributors of new vehicles (as defined in Section 430 of the Vehicle Code) are required to file a written statement with the Board on or before May 1 of each calendar year. The statement shall include:

(1) The number of new motor vehicles distributed by the manufacturer or distributor which were sold, leased, or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year;

(2) The name and business address of other manufacturers and distributors who are required to submit a statement reporting the distribution of the same new motor vehicles;

(3) The name and business address of the person or persons authorized to receive notices on behalf of the manufacturer or distributor.

(b) If the information required by subdivision (a) is not received by the Board within the applicable time period or it is determined by the Board that the information that is received is substantially inaccurate as compared to the registration information derived from the records of the Department of Motor Vehicles, it shall be presumed that the number of new motor vehicles sold, leased, or otherwise distributed in this state by or on behalf of the non-reporting entity during the preceding calendar year is equal to the total number of new registrations during the period in question of all vehicles manufactured or distributed by the non-reporting entity as derived from the records of the Department of Motor Vehicles.

#### **553.20. Determination of Annual Board Fee.**

Upon receipt of the information required by Section 553.10(a), or as determined by Section 553.10(b), the Board shall calculate the Annual Board Fee to be paid by each manufacturer and distributor by multiplying the annual fee per vehicle (as set forth in Section 553(b)) by the number of new motor vehicles distributed by the manufacturer or distributor in the preceding calendar year. The Board shall thereafter send a written notice by certified mail, return receipt requested, to each manufacturer and distributor stating the number of new motor vehicles distributed by the manufacturer or distributor and the amount of the fee to be paid. Payment of the fee shall be made to the New Motor Vehicle Board no later than thirty (30) days after the date of receipt of the notice.

#### **553.40. Filing Fees.**

A party filing a request for informal mediation, petition, appeal, or protest pursuant to the provisions of this subchapter shall simultaneously deliver to the board a filing fee of \$200, which

is to be in the form of a check or money order payable directly to the board, or a credit card payment. The initial pleading filed in response to such request for informal mediation, petition, appeal, or protest shall also be accompanied by a \$200 filing fee. The board, in the discretion of the executive director, may refuse to accept for filing any pleading subject to this section that is not accompanied by the requisite fee. The executive director may, upon showing of good cause, waive any such fee.

### ***Article 1.5. Administration of Fee Collection for Count***

#### **553.50. Obligation to Comply.**

(a) All manufacturers, manufacturer branches, distributors and distributor branches of new motor vehicles (as defined in Business and Professions Code Section 472(a)) are required to file a written statement with the New Motor Vehicle Board on or before May 1 of each calendar year. The statement shall include:

(1) The number of new motor vehicles distributed by the manufacturer or distributor which were sold, leased, or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year;

(2) The name and business address of other manufacturers and distributors who are required to submit a statement reporting the distribution of the same new motor vehicles; and

(3) The business address and name of the person or persons authorized to receive notices on behalf of the manufacturer or distributor.

(b) Payment of the fees pursuant to Business and Professions Code Section 472.5 shall be the responsibility of the manufacturer or distributor which authorizes a retail seller, including a dealer, franchisee, or lessor (as those terms are defined in the Vehicle Code), to sell, lease, or otherwise distribute the new motor vehicles.

#### **553.60. Presumption of Liability.**

If the information required by Section 553.50 is not received by the Board within the applicable time period or it is determined by the Board that the information that is received is substantially inaccurate as compared to the registration information derived from the records of the Department of Motor Vehicles, it shall be presumed that the number of new motor vehicles sold, leased, or otherwise distributed in this state by or on behalf of the non-reporting entity during the preceding calendar year is equal to the total number of new registrations during the period in question of all vehicles manufactured or distributed by the non-reporting entity as derived from the records of the Department of Motor Vehicles.

#### **553.70. Payment of Fees.**

The New Motor Vehicle Board shall determine the fee to be assessed per vehicle by dividing the dollar amount necessary to fully fund the certification program for the Arbitration Review Program by the number of new motor vehicles sold, leased, or otherwise distributed in California during the preceding calendar year. For calendar year 2002, the fee shall be \$.391 per vehicle. Upon receipt of the information required by Section 553.50(a), or as determined by section 553.60, the New Motor Vehicle Board shall send a written notice by certified mail, return receipt requested, to manufacturers and distributors subject to the fee assessment stating the number of new motor vehicles distributed by the manufacturer or distributor and the amount of the fee to be

paid. Payment of the fee shall be made to the New Motor Vehicle Board no later than thirty (30) days after the date of receipt of the notice.

**553.71. Delinquency of Payment.**

If the fee is not paid within the time period specified in Section 553.70 such fee is delinquent. If the fee is not paid within thirty (30) days after it becomes delinquent, a penalty of ten (10) percent of the amount delinquent shall be added thereto.

**553.72. Transmittal of Fees By Mail.**

No penalty shall be imposed for delinquent payment of any fee required to be paid under this article in the event any instrument for effective payment of such fee is placed in the United States mail or in any postal box maintained by the United States Postal Service with sufficient identification, in an envelope with postage thereon prepaid and addressed to the New Motor Vehicle Board, 1507 21<sup>st</sup> Street, Suite 330, Sacramento, California, 95814 prior to the date the fee becomes delinquent.

**553.75. Noncompliance.**

The New Motor Vehicle Board may consider any failure of a manufacturer or distributor to comply with any provisions of this Chapter to be good cause to exercise its authority pursuant to Vehicle Code Section 3050(c).

***Article 2. Filing of Petition***

**554. Petitioners.**

Any person, including a board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, may file a written petition with the board requesting that the board consider such matter and take an action thereon.

**555. Contents.**

The petition shall set forth in clear and concise language the nature of the matter which the petitioner wishes the board to consider. The petition shall comply substantially with the following requirements:

(a) Include the name, mailing address and telephone number of the petitioner; the name, mailing address and telephone number of his attorney or authorized agent if any, and the name and address of the licensee or applicant for license (hereinafter referred to as "respondent") whose activities or practices are in question. All correspondence with petitioner and notices to petitioner shall be addressed to petitioner's said address, if he appears in person, or to the address of his attorney or agent, if he is represented by an attorney or agent. Petitioner shall promptly give the executive director and respondent written notice by mail of all subsequent changes of address or telephone number.

(b) Insofar as is known to petitioner, include the names, residence addresses and business addresses of persons and the dates, places and specific actions or practices involved in the matter.

(c) If the actions or practices described in the petition are believed to be in violation of law, a concise recitation of applicable law and citation to the applicable statutes or other

authorities.

(d) If the petitioner desires that the board mediate, arbitrate or resolve a difference between the petitioner and respondent, recite that fact and describe the relief or disposition of the matter which petitioner would consider acceptable.

(e) The petitioner may submit, as exhibits to the petition, photographic, documentary or similar physical evidence relevant to the matter referred to in the petition, in which event an appropriate description of the exhibits shall be set forth in the petition sufficient to identify them and to explain their relevancy.

(f) The petitioner shall set forth in the petition an estimate of the number of days required to complete the hearing.

(g) The petitioner shall set forth in the petition a request for a prehearing conference if one is desired.

#### **555.1 Service of Petition Upon Respondent(s).**

A copy of the petition shall be served upon the respondent(s) and proof of service (in compliance with Sections 1013(a) and 2015.5, Code of the Civil Procedure) thereof shall accompany the petition filed with the executive director of the board.

#### **556. Form and Filing of Petition.**

The form of the petition shall conform with the provisions of Article 6 hereof. The petition shall be filed with the executive director of the board.

#### **557. Notice to Respondent: First Consideration.**

(a) Upon the filing of a petition with the board, a copy of the petition shall be transmitted by the executive director of the board to each member of the board for consideration. Unless, within 10 days of receipt of a copy of the petition, any member of the board notifies the executive director of an objection, the executive director shall set the matter for a hearing before an administrative law judge designated by the board.

(b) If any member of the board gives notice of objection within 10 days of receipt of a copy of a petition, the petition shall be first considered by the board at its next meeting to determine what action shall be taken in regards to the petition. Upon receipt by the executive director of a notice of objection, the executive director shall notify the parties named in the petition that there has been an objection and that the matter will be considered by the board at its next meeting. The parties shall also be given a minimum of 10 days prior notice of the time, date, and location of the board meeting at which the petition will be considered.

#### **558. Answer-Time of Filing; Form and Content.**

(a) The respondent shall file with the executive director of the board a written answer to the petition, in the form prescribed by Article 6 hereof. The answer shall be filed within 30 days of the date of service of the petition on the respondent.

(b) The answer shall be responsive to the allegations of the petition and shall set forth in clear and concise language the factual contentions of the respondent with respect to the matter referred to in the petition.

(c) The respondent may submit, as exhibits to the answer, photographic, documentary or similar physical evidence relevant to the matter in support of the answer with an appropriate

description thereof in the answer sufficient to identify them and to explain their relevancy.

(d) The respondent shall set forth in the answer his mailing address and telephone number and the name, mailing address and telephone number of his attorney or authorized agent, if any. All correspondence with respondent and notices to respondent shall thereafter be addressed to said address, if he appears in person, or to the address of his attorney or agent, if he is represented an attorney or agent. Respondent shall promptly give the executive director and petitioner written notice by mail of all subsequent changes of address or telephone number.

#### **560. Extension of Time and Continuances.**

(a) In the event a party desires additional time for the performance of any act, or a continuation of any proceeding contemplated by these rules, the party shall either make application in writing to the board for such extension or continuance, stating the reason therefor and the additional time requested, or the date to which the continuance is requested, or shall obtain from the other party a written stipulation for the extension or continuance which shall also set forth the reasons therefor and the time requested. The application or stipulation shall be filed with the executive director at least two days prior to the expiration of the period of time in question or the date fixed for the proceeding sought to be continued. If good cause appears therefor, the executive director shall grant the extension or continuance and shall forthwith give notice thereof to the parties by mail; if the extension or continuance is denied, the executive director shall give notice thereof to the parties by mail.

(b) The party applying for an extension or continuance shall serve a copy of the application upon the opposing party, personally or by mail, and shall file with the application an affidavit or certificate of personal service or of mailing of the copy to the opposing party evidencing such service. If the other party wishes to oppose the application, he shall communicate such opposition to the executive director, either orally or in writing, stating his reasons for opposition. The executive director shall consider the reasons stated in opposition in determining whether the application should be granted or denied.

#### **561. Additional Evidence and Argument in Support of Petition.**

(a) A party wishing to present to the board evidence and/or arguments in addition to that submitted in accordance with Section 555 hereof may, prior to the first consideration of the petition by the board, advise the executive director in writing of his desire to do so by filing with the board not later than ten days before the date set for the first consideration of the petition a request to present such additional evidence and/or arguments.

(b) The request to present additional evidence and/or argument filed pursuant to Section 561(a) hereof shall contain, as applicable:

(1) The names and addresses of witnesses together with a brief statement summarizing their expected testimony;

(2) Copies or reproduction of all documentary or physical evidence, in addition to that already furnished pursuant to Section 555(e) hereof;

(3) A summary of the subject or subjects expected to be covered by argument;

(4) A statement of the reason or reasons why it is desirable for the board to grant the request.

(c) The board may grant a request filed pursuant to Section 561(a) hereof if it determines that its first consideration of the petition would be assisted by such evidence and more argument.



(d) Upon the filing of the request pursuant to Section 561(a) hereof, the board shall, prior to proceeding with the first consideration of the matter decide whether to grant the request. If the request is granted, the board shall:

(1) Set a time and place for the hearing where the oral or documentary or physical evidence may be heard and presented. Hearings set pursuant to this provision shall be conducted in accordance with Sections 589, 590 and 592 hereof;

(2) Set the time and place where the argument shall be heard by the board.

(e) The Board shall in no event proceed with the first consideration of a petition unless it has reviewed the additional evidence and/or argument submitted pursuant to the provisions of Section 561(d) hereof.

#### **562. Action by the Board.**

After considering the matter, the board may do any one or any combination of the following:

(a) Prior to taking final action, direct the executive director to request the petitioner or the respondent, or both, to augment the record, or to appear to offer evidence or oral argument, or both, or to file briefs, in which event the executive director shall give written notice by mail to the parties of the action by the board, the time within which such augmented pleadings or such briefs are to be submitted or the time and place of further hearing.

(b) Prior to taking final action, direct the department to conduct an investigation and submit a written report within thirty days with or without notice thereof to the parties.

(c) Undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between the petitioner and respondent.

(d) Direct that the department exercise any and all authority or power that it may have with respect to the issuance, renewal, refusal to renew, suspension or revocation of the license and certificate of the respondent as such license and certificate are required under Chapter 4, Division 5 of the Vehicle Code.

(e) Order the petition dismissed, with or without prejudice to the filing of another petition with respect to the same matter, upon such terms or conditions as it may deem just.

#### **564. Decision.**

The decision shall be in writing. Copies of the decision shall be served on the parties personally or sent to them by certified or registered mail. The decision shall be final upon its delivery or mailing and no reconsideration or rehearing shall be permitted.

#### **565. Request for Extension of Time; Temporary Ownership or Operation of a Dealership by a Manufacturer, Branch, or Distributor.**

(a) After a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to own and operate a dealership within the relevant market area of an independent dealer of the same line-make in preparation for sale to a successor independent franchisee, the board may extend the time period beyond one year.

(b) When a manufacturer, branch, or distributor seeks to request an extension of time, it shall first give notice in writing of that intention to the board and to each franchisee operating a dealership of the same line-make within the relevant market area.

(c) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

“NOTICE TO DEALER: If you oppose this request, you may send a letter to the NEW MOTOR VEHICLE BOARD in Sacramento and have your opposition considered by the board. You must file your opposition with the board within 20 days of your receipt of this notice.”

(d) When a request for extension of time has been received, the board shall notify each franchisee of the same line-make within the relevant market area, as provided by the manufacturer pursuant to subsection (g)(1) below, that a timely request has been received, that the franchisee has the opportunity to send a letter to the board opposing the request and have that opposition considered by the board at its next scheduled meeting, and that the status quo will be maintained until the board acts upon the request for extension.

(e) In determining whether good cause has been shown for granting the request for an extension of time, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

(1) The written request of the manufacturer, branch, or distributor;

(2) Written responses in opposition to the request received from any franchisee operating a dealership of the same line-make within the relevant market area; and,

(3) Comments of other interested parties.

(f) Upon the filing of a timely request for an extension of time, a copy of the request for extension shall be transmitted by the executive director of the board to each member of the board for consideration.

(g) The written request for an extension of time shall be accompanied by all of the following:

(1) A list of all franchisees operating a dealership of the same line-make within the relevant market area.

(2) A statement of facts detailing the specific need for the extension of time.

(3) The requested expiration date of the extension.

(4) A chronology of the actions both taken and planned by the manufacturer, branch, or distributor to prepare for the sale of the franchise to a successor independent franchisee.

(5) A statement to the effect that the information required in subsections (g)(2)-(4) above has been provided to each franchisee operating a dealership of the same line-make within the relevant market area.

(6) A statement that the requesting party does or does not agree that the dealer members of the board may participate in the consideration of the request.

(h) The executive director shall grant the extension unless, within 30 days from receipt of the request for extension, any member of the board notifies the executive director of an objection or the board receives a written response in opposition to the request from any franchisee operating a dealership of the same line-make in the relevant market area.

(i) If any member of the board gives notice of objection within 30 days of receipt of a copy of the request for extension, or if the board receives a timely written opposition to the request from any franchisee operating a dealership of the same line-make within the relevant market area, this matter shall be considered by the board at its next scheduled meeting.

(j) Upon receipt by the executive director of a notice of objection and/or a written opposition from any franchisee operating a dealership of the same line-make within the relevant market area, the executive director shall notify the manufacturer, branch, or distributor that there has been an objection and/or opposition, that the matter will be considered by the board at its next scheduled meeting, and that the status quo will be maintained until the board acts upon the

request for extension. The manufacturer, branch, or distributor, and opposing franchisee(s), if any, operating a dealership of the same line-make within the relevant market area shall be given a minimum of 10 days' prior notice of the time, date, and location of the board meeting at which the request for extension will be considered.

(k) Notwithstanding subsections (h), (i) and (j) above, a member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter involving a request subject to this subsection, unless the requesting party to the proceeding has had full disclosure and agrees to such participation by the dealer board member.

(l) On or before 60 days prior to the expiration of the one year period, the manufacturer, branch, or distributor may request an extension of time for good cause shown which shall be in writing. Requests received with less than 60 days' prior notice will not be considered by the board and shall be deemed denied.

(m) Within 20 days of receiving the notice, any franchisee required to be given notice may file an opposition to the request for an extension of time.

### ***Article 3. Appeals from Decisions of the Department***

#### **566. Time of Filing Notice of Appeal.**

Notice of appeal shall be filed with the executive director of the board on or before:

(a) Forty days after delivery or registered mailing to appellant the decision appealed from, if its effective date is thirty days following service upon the appellant; or

(b) Ten days after the effective date of the decision appealed from, if such date is prior to the expiration of the 30-day period; or

(c) Ten days after the expiration of any stay of execution of the entire decision granted by the department.

#### **567. Form.**

Notice of appeal shall be in writing and signed by appellant or appellant's attorney. It shall conform with the provisions of Article 6 hereof.

#### **568. Contents of Notice of Appeal.**

Notice of appeal shall set forth in concise language the following:

(a) That appellant is an applicant for, or a holder of, a license as a new car dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative, as defined in Sections 426, 672, 389, 296, 297 and 512 Vehicle Code, respectively.

(b) Those portions of Sections 3054 or 3055 Vehicle Code providing basis for appeal.

(c) That appellant has applied to the Office of Administrative Hearings for the complete administrative record or those portions that appellant desires to file with the board and has advanced costs of preparation thereof; or, in lieu thereof, that the case is being submitted on an agreed statement.

(d) If the appeal is based in whole or in part on Section 3054(e), Vehicle Code, a statement that appellant desires to produce before the board relevant evidence which in the exercise of reasonable diligence could not have been produced or which was improperly excluded at the hearing.

(e) That appellant either does or does not desire to appear before the board.

**569. Affidavit in Support of Appeal Based on Section 3054(e), Vehicle Code.**

Where the notice of appeal contains the statement required by Section 568(d), the notice of appeal shall be supported by an affidavit of the appellant setting forth the matters in either (a) or (b) of this section, or both, as appropriate:

(a) A statement that there is evidence which was not available at the administrative hearing through the exercise of reasonable diligence; the substance of the evidence; the relevance of the evidence to a disputed issue; and a full explanation of why the evidence was not produced at the administrative hearing.

(b) A statement that there is evidence which was rejected at the administrative hearing; the substance of the evidence; the relevance of the evidence to a disputed issue; and a statement of the evidence establishing that the proffered evidence was, in fact, presented at the administrative hearing and was rejected despite a duly made offer of proof.

**570. Service of Notice Upon Department.**

(a) A copy of the notice of appeal and all supporting affidavits shall be served upon the department and proof of service shall accompany the notice filed with the executive director of the board.

**571. Filing With Board the Administrative Record.**

(a) Upon receipt from the Office of Administrative Hearings, appellant shall forward forthwith to the executive director the original and three copies of the complete administrative record which shall consist of the reporter's transcript and all the pleadings and exhibits received at the administrative hearing. In lieu thereof, appellant may forward those parts of the administrative record which appellant deems necessary to support its appeal. If the case is being submitted on an agreed statement, only the accusation and director's decision need be forwarded.

(b) If appellant files a partial administrative record, it shall serve, prior to or at the time of filing such partial record, written notice on the department of those portions of the record that appellant will file with the board and proof of service of such notice shall be filed with the executive director.

(c) The department may file any additional portions of the administrative record that it deems necessary to make an adequate presentation of its case. Such filing shall consist of the original and three copies and shall be no later than ten (10) days after notification by appellant of those portions of the record that appellant is filing unless, for good cause shown, the executive director grants additional time. Prior to or at the time the department files additional portions of the administrative record with the board, notice shall be served by the department on appellant of such additional portions and proof of service of such notice shall be filed with the executive director.

(d) If the complete administrative record has not been filed, the board may order additional portions of such record to be filed at any time during the pendency of the appeal. The board may order prior payment of the cost of providing the additional administrative record so ordered to be filed.

**572. Agreed Statement.**

(a) An appeal may be presented on a record consisting in whole or in part of an agreed statement. Within thirty days after receiving the administrative record, the appellant shall file

with the executive director of the board the original and nine copies of such statement signed by the parties.

(b) The statement shall show the nature of the controversy, identify the questions of law, and set forth only those facts alleged and proved, or sought to be proved, as are necessary to a determination of the questions on appeal.

(c) Ten copies of any such exhibits admitted at the administrative hearing as the parties may desire shall accompany the statement.

(d) For good cause shown, the executive director may grant a continuance of not more than fifteen days for the filing of an agreed statement. Application for a continuance shall be in writing and shall be filed with the executive director at least ten days prior to the date the agreed statement was to be filed. No continuance otherwise requested shall be granted except in extreme emergencies such as serious accident or death.

### **573. Briefs.**

(a) Upon receiving the administrative record or agreed statement of facts from appellant, the executive director shall inform the parties in writing of the date by which their briefs must be filed with the board. The parties shall comply with the briefing schedule as established by the executive director.

(b) For good cause shown, the executive director may grant continuances for the filing of briefs making adequate allowance for the 60-day time limitation prescribed in Vehicle Code Section 3056. Application for a continuance shall be in writing and shall be filed with the executive director at least ten days prior to the date the brief was to be filed. No continuance shall be granted except in extreme emergencies such as serious accident or death.

(c) Any party to the appeal desiring to file a brief must submit the original and nine copies for such filing. A copy shall be served upon the opposing party and proof of service thereof shall accompany the original filed with the executive director.

(d) The board may require the parties to file anytime during the pendency of the appeal briefs on matters determined by the board.

(e) A brief of amicus curiae may be filed on permission of the board and subject to conditions prescribed by the board. To obtain permission, the applicant shall file with the executive director a signed request specifying the points to be argued in the brief and containing a statement that the applicant is familiar with the question involved in the case and the scope of their presentation and believes there is a necessity for additional arguments on the points specified.

(f) If the application for filing amicus curiae briefs is granted, the original and nine copies shall be filed with the executive director. A copy shall be served on the appellant and the department and proof of service thereof shall accompany the original filed with the executive director.

### **574. Notice of Hearing.**

At least 20 days prior to the hearing date, the executive director shall serve notice of date, time and place of hearing upon the department, the appellant, the members of the board and any other party making a written request for such notice.

**575. Continuances.**

For good cause shown, the executive director may continue the date fixed for the hearing. Applications for continuance shall be in writing and shall be filed with the executive director at least ten days prior to the hearing. No continuance otherwise requested shall be granted except in extreme emergencies such as serious accident or death.

**576. Conduct of Hearing.**

Unless otherwise ordered by the board, counsel for each party shall be allowed 20 minutes for oral argument. Not more than one counsel for a party may be heard except that different counsel for appellant may make opening and closing arguments.

**577. Costs of Appeal.**

Each party shall bear its own costs on appeal; costs for preparation of the administrative record and copies thereof shall be borne by the party ordering the same, or if ordered by the board pursuant to Section 571, shall be borne by appellant or the board as determined by the board.

All proceedings before the board predicated on or pursuant to Section 568(d), except deliberations in executive session, shall be reported and transcribed by a certified shorthand reporter arranged for by the executive director. Costs for reporting and for preparation of the original transcript shall be borne by the appellant.

***Article 4. Hearings on Petitions and Appeals*****580. Procedure at Hearings.**

(a) Evidence. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Evidence that is irrelevant or unduly repetitious shall be excluded.

(b) Official Notice. Before or after submission of a matter for decision, official notice may be taken by the board of any generally accepted technical or scientific matter within the board's special area of competence or of such facts as may be judicially noticed by the courts of this state.

(c) Examination of Witness. Oral evidence shall be taken only on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; to rebut the evidence against him; and to call and examine an adverse party or adverse witness as if under cross-examination without being bound by his testimony. Board members and, at the direction of the chairman of the board presiding at the hearing or of any member of the board, representatives of the staff of the board, may participate as appropriate, using their knowledge and experience for the primary purpose of developing a full, fair and accurate record. Questioning of witnesses will be controlled by the board and will generally be permitted only by the attorneys or agents of parties so represented, or by the parties who appear on their own behalf, members of the board and its staff. The board may in its discretion, during

the examination of a witness, exclude from the hearing, any or all other witnesses in the same matter.

**581. Deliberations of the Board.**

When matters are finally submitted to the board for decision, the board shall take the same under submission and shall conduct its deliberations in executive session. The deliberations of the board shall be in private and shall not be reported.

**582. Failure to Appear.**

Any party who fails to appear at a hearing will not be entitled to a further opportunity to be heard unless good cause for such failure is shown to the board within five days thereafter. The lack of such showing of good cause may, in the discretion of the board, be interpreted as an abandonment of interest by such party in the subject matter of the proceeding.

***Article 5. Protests***

**583. Form.**

A protest shall be in writing and shall be signed by a franchisee or his attorney. It shall conform with the provisions of Article 6 hereof.

**584. Service of Protest Upon Franchisor.**

A copy of the protest shall be served upon the franchisor and proof of service (in compliance with Sections 1013(a) and 2015.5, Code of Civil Procedure) thereof shall accompany the protest filed with the executive director of the board.

**585. Time of Filing and Content of Protests Pursuant to Sections 3060, 3062, 3070 and 3072, Vehicle Code.**

(a) The protest shall be considered received on the date of receipt by the executive director of the board or on the date of certified or registered mailing.

(b) The protest shall be responsive to the specific grounds as set forth in the notice and shall set forth in clear and concise language the factual contentions of the franchisee with respect to the matter referred to in the notice.

(c) The franchisee may submit, as exhibits to the protest, photographic, documentary or similar physical evidence relevant to the matter in support of the protest with an appropriate description thereof in the protest sufficient to identify them and to explain their relevancy.

(d) The franchisee shall set forth in the protest his mailing address and telephone number and the name, mailing address and telephone number of his attorney or authorized agent, if any. All correspondence with franchisee and notices to franchisee shall thereafter be addressed to said address, if he represents himself, or to the address of his attorney or agent, if he is represented by an attorney or agent.

(e) Franchisee shall indicate either that he does or does not desire to appear before the board.

(f) The franchisee shall set forth in the protest an estimate of the number of days required to complete the hearing.

(g) The franchisee shall set forth in the protest a request for a prehearing conference if

one is desired.

#### **585.1. Time of Filing and Content of Notice of Appearance**

The respondent shall file a notice of appearance with the board within 15 days of receipt of the protest. Failure to file a timely notice of appearance shall result in the proceedings being suspended until such time as a notice of appearance is filed. The notice shall contain language indicating whether the party desires to appear at the hearing for purposes of submitting evidence and oral argument and whether the respondent contends the protest was submitted in a timely manner.

#### **586. Filing of Protest, Schedules of Compensation for Preparation and Delivery Obligations, Warranty Reimbursement Schedules or Formulas, and Franchisor Incentive Program Reimbursement Pursuant to Sections 3064, 3065, 3065.1, 3074, 3075, and 3076 V.C.**

(a) Protests filed with the board under any of these sections of the Vehicle Code shall be filed as follows:

(1) The protest shall set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.

(2) The franchisee may submit, as exhibits to the protest, photographic, documentary or similar physical evidence relevant to the matter in support of the protest with an appropriate description thereof in the protest sufficient to identify them and to explain their relevancy.

(3) The franchisee shall set forth in the protest his mailing address and telephone number and the name, mailing address and telephone number of his attorney or authorized agent, if any. All correspondence with franchisee and notices to franchisee shall thereafter be addressed to said address, if he represents himself, or to the address of his attorney or agency, if he is represented by an attorney or agent.

(4) Franchisee shall indicate either that he does or does not desire to appear before the board.

(b) Schedule of compensation for preparation and delivery obligation and warranty reimbursement schedule or formula shall be filed by the franchisor with the board no later than 30 days after date license is issued or within 30 days after date of renewal of license if no schedule or formula has previously been filed with the board.

(c) The franchiser shall file with the board any addition, deletion, change or modification to the schedule of compensation or reimbursement schedule or formula on file with the board on or before the date such addition, deletion, change or modification becomes effective.

#### **587. Stipulation of Fact.**

(a) A hearing initiated by the filing of a protest with the board pursuant to Sections 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, and 3076, may be held based in whole or in part on a stipulation of fact. Within 45 days after filing a protest, the franchisee shall file with the executive director of the board the original and 10 copies of such statement signed by the parties.

(b) The statement shall show the nature of the controversy, identify the questions of law, if any, and set forth only those facts alleged or sought to be proved, as are necessary to a determination of the issues raised by the protest.

(c) For good cause shown, the executive director may grant a continuance for the filing of a stipulation of fact of not more than fifteen days.



**588. Deliberations of the Board.**

When matters are finally submitted to the board for decision, or the board receives a proposed decision of an administrative law judge, the board shall take the same under submission and shall conduct its deliberations in executive session. The deliberations of the board shall be in private and shall not be reported.

**589. Failure to Appear.**

Any party who fails to appear at a hearing will not be entitled to a further opportunity to be heard unless good cause for such failure is shown to the board or to the administrative law judge within five days thereafter. The lack of such showing of good cause may, in the discretion of the board or the administrative law judge, be interpreted as an abandonment of interest by such party in the subject matter of the proceeding.

**590. Hearings by Board or by Administrative Law Judge.**

All hearings on protests filed pursuant to Sections 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076 may be considered by the entire board or may, at its discretion, be conducted by an administrative law judge designated by the board who shall either be a member of the board, an administrative law judge on the staff of the Office of Administrative Hearings, the executive director of the board, or any person specifically designated by the board.

**591. Notice of Hearing.**

The board shall, by an order, fix the time and place of hearing. The hearing shall be within 60 days of the date of such order. A copy of the order giving notice of the time and place of hearing shall be sent by registered mail to the franchisor, the protesting franchisee and to all individuals and groups which have requested such notice.

**592. Continuances.**

Within the time limitation fixed by Section 3066(a), the board, or the administrative law judge, for good cause shown, may continue the date fixed for the hearing. Application for continuance shall be in writing and filed with the executive director at least 10 days prior to the date of hearing. No continuances otherwise requested shall be granted except in extreme emergencies such as serious accident or death.

***Article 6. Form of Filings and Notices*****593. Papers Defined-Approved Forms.**

The word "papers" means all documents, except exhibits or copies of documents, which are offered for filing to the executive director in any proceeding before the board; provided however, that it does not include any printed forms approved by the board. Approved forms shall be furnished by the executive director to the public on request, and, unless it is impracticable to do so, the parties to proceedings before the board shall use approved forms.

**593.1 Notices.**

All written notices pursuant to Vehicle Code section 3062 or 3072 shall be textually segregated in a separate paragraph such that the language informing the recipient of the intention of the franchisor to establish or relocate a dealership is not intermingled with or obscured by the surrounding text.

### **593.2. Briefs.**

Any brief filed with the board in support or opposition to any application, motion, memorandum of points and authorities or other position paper, shall include copies of any court decision cited within that brief which decision is not taken from an official reporter.

### **593.3. Failure to File or to Timely File Statutorily Required Notices, Schedules, or Formulas.**

Failure to file or to timely file the statutorily required notices, schedules, or formulas required by the Vehicle Code may result in the board ordering the department to exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as that license is required under Chapter 4 (commencing with Section 11700) of Division 5.

### **594. Size of Paper, Pagination, Etc.**

All papers shall be typewritten or printed on opaque, unglazed, white paper, not less than twenty pound weight, standard quality letter size (8 ½ x 11 inches in size). Only one side of the paper shall be used and the margins shall be not less than 1 inch on the left hand side of the page and 2 inch on the top, bottom and right hand sides of the page. Headings shall be either capitalized or underscored, or both, and all quotations shall be indented. The type shall be not smaller than 12 points. The lines on each page shall be double spaced. Line numbers shall be placed at the left margin and separated from the text of the paper by a vertical column of space at least one-fifth inch wide or a single or double vertical line. The line number either shall be placed on the same line as a line of type or shall be evenly spaced vertically on the page. Line numbers shall be consecutively numbered beginning with the number 1 on each page. There shall be at least three line numbers for every vertical inch on the page. The pages shall be numbered consecutively at the center of the page at the bottom. All papers shall consist entirely of original pages without riders and shall be firmly bound together at the top. Exhibits may be fastened to pages of the specified sizes and, when prepared by a machine copying process, shall be equal to typewritten material in legibility and permanency of image.

### **§ 595. Format of First Page.**

The first page of all papers shall be in the following form: Commencing in the upper left hand corner and to the left of the center of the page, the name, office address (or if none, the residence address), mailing address (if different from the office or residence address), electronic- mail (e-mail) address, if available, and the telephone number of the attorney or agent for the party in whose behalf the paper is presented, or of the party if he is appearing in person. If the party is represented by an attorney, provide the state bar number of the attorney beside the name of the attorney. Below the name, address and telephone number, and centered on the page, the title of the board. Below the title of the board, in the space to the left of the center of the page, the title of the proceeding, e.g., John Doe, petitioner (or protestant, or appellant) vs. Richard Roe (or Department of Motor Vehicles), respondent, as the case may be. To the right of and opposite the title, the number of the proceeding, which shall be assigned consecutively by the executive director in the order of filing in petition, appeal, and protest proceedings. No number shall be assigned to more than one proceeding. Immediately below the number of the proceeding, the nature of the paper, e.g., "Request for Informal Mediation," "Petition," "Protest," "Answer,"

“Appeal,” “Request for Hearing,” “Petitioner’s Opening Brief,” etc. The first allegation of the petition shall state the name and address of the respondent and whether the respondent is the holder of or an applicant for an occupational license of the type issued by the Department of Motor Vehicles such that the respondent is subject to the jurisdiction of the board.

**596. Conformance of Copies.**

All copies shall conform to the original filed.

**597. Last Page.**

Every paper shall be dated and signed. At the end of each paper, the date shall appear on the left of the center of the page. Petitions, answers and appeals shall be subscribed by the party and by his attorney or agent, if he is represented. All other papers shall be subscribed by the party’s attorney or agent, if he is represented, or by the party, if he appears in person. The signature shall appear at the end of the paper on the right hand side.

**598. Acceptance of Filing.**

(a) A document which purports to be a protest pursuant to Vehicle Code section 3060, 3062, 3070, or 3072, which is received at the offices of the Board shall not be filed until the executive director has reviewed it for compliance with the Board’s enabling statutes and Title 13, Subchapter 2 of the California Code of Regulations. If the executive director deems the document to comply, said document shall be filed. The executive director may reject any document that does not comply with the Board’s enabling statutes and Title 13, Subchapter 2 of the California Code of Regulations.

(b) A protest accepted for filing by the executive director shall be recorded as filed as of the date it was received at the Board’s offices or the date of certified or registered mailing.

(c) The executive director may, for good cause shown, accept for filing any papers that do not comply with the Board’s enabling statutes and Title 13, Subchapter 2 of the California Code of Regulations. Good cause issues and challenges to the executive director’s compliance determinations may be resolved by law and motion proceedings before an administrative law judge.

***Article 7. New Motor Vehicle Board-Conflict of Interest Code***

**NOTE:** It having been found, pursuant to Government Code section 11344(a), that the printing of the regulations constituting the Conflict of Interest Code of the New Motor Vehicle Board is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

NEW MOTOR VEHICLE BOARD  
1507 - 21<sup>ST</sup> STREET, SUITE 330  
SACRAMENTO, CALIFORNIA 95814

FAIR POLITICAL PRACTICES COMMISSION  
428 J STREET, SUITE 620  
SACRAMENTO, CALIFORNIA 95812-0807

ARCHIVES  
SECRETARY OF STATE  
1020 O STREET  
SACRAMENTO, CALIFORNIA 95814

The Conflict of Interest Code is designated as Article 7 of Chapter 2 of Division 1 of Title 13 of the California Code of Regulations, and consists of sections numbered and titled as follows:  
Article 7. New Motor Vehicle Board—Conflict of Interest Code  
Section

**599. General Provisions**  
Appendix A

**Appendix III**  
***Government Code***

**CALIFORNIA GOVERNMENT CODE**

**CHAPTER 4.5. ADMINISTRATIVE ADJUDICATION:  
GENERAL PROVISIONS**

***Article 1. Preliminary Provisions***

**Administrative Procedure Act; References to superseded provisions**

11400. (a) This chapter and Chapter 5 (commencing with Section 11500) constitute the administrative adjudication provisions of the Administrative Procedure Act.

(b) A reference in any other statute or in a rule of court, executive order, or regulation, to a provision formerly found in Chapter 5 (commencing with Section 11500) that is superseded by a provision of this chapter, means the applicable provision of this chapter.

**Operative date of chapter; Applicability**

11400.10. (a) This chapter is operative on July 1, 1997.

(b) This chapter is applicable to an adjudicative proceeding commenced on or after July 1, 1997.

(c) This chapter is not applicable to an adjudicative proceeding commenced before July 1, 1997, except an adjudicative proceeding conducted on a remand from a court or another agency on or after July 1, 1997.

**Adoption of interim or permanent regulations**

11400.20. (a) Before, on, or after July 1, 1997, an agency may adopt interim or permanent regulations to govern an adjudicative proceeding under this chapter or Chapter 5 (commencing with Section 11500). Nothing in this section authorizes an agency to adopt regulations to govern an adjudicative proceeding required to be conducted by an administrative law judge employed by the Office of Administrative Hearings, except to the extent the regulations are otherwise authorized by statute.

(b) Except as provided in Section 11351:

(1) Interim regulations need not comply with Article 5 (commencing with Section 11346) or Article 6 (commencing with Section 11349) of Chapter 3.5, but are governed by Chapter 3.5 (commencing with Section 11340) in all other respects.

(2) Interim regulations expire on December 31, 1998, unless earlier terminated or replaced by or readopted as permanent regulations under paragraph (3). If on December 31, 1998, an agency has completed proceedings to replace or readopt interim regulations and has submitted permanent regulations for review by the Office of Administrative Law, but permanent regulations have not yet been filed with the Secretary of State, the interim regulations are extended until the date permanent regulations are filed with the Secretary of State or March 31, 1999, whichever is earlier.

(3) Permanent regulations are subject to all the provisions of Chapter 3.5 (commencing with Section 11340), except that if by December 31, 1998, an agency has submitted the regulations for review by the Office of Administrative Law, the regulations are not subject to review for necessity under Section 11349.1 or 11350.

## ***Article 2. Definitions***

### **Definitions governing construction of chapter**

11405.10. Unless the provision or context requires otherwise, the definitions in this article govern the construction of this chapter.

#### **“Adjudicative proceeding”**

11405.20. “Adjudicative proceeding” means an evidentiary hearing for determination of facts pursuant to which an agency formulates and issues a decision.

#### **“Agency”**

11405.30. “Agency” means a board, bureau, commission, department, division, office, officer, or other administrative unit, including the agency head, and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf of or under the authority of the agency head. To the extent it purports to exercise authority pursuant to this chapter, an administrative unit otherwise qualifying as an agency shall be treated as a separate agency even if the unit is located within or subordinate to another agency.

#### **“Agency head”**

11405.40. “Agency head” means a person or body in which the ultimate legal authority of an agency is vested, and includes a person or body to which the power to act is delegated pursuant to authority to delegate the agency’s power to hear and decide.

#### **“Decision”**

11405.50. (a) “Decision” means an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person.

(b) Nothing in this section limits any of the following:

(1) The precedential effect of a decision under Section 11425.60.

(2) The authority of an agency to make a declaratory decision pursuant to Article 14 (commencing with Section 11465.10).

#### **“Party”**

11405.60. “Party” includes the agency that is taking action, the person to which the agency action is directed, and any other person named as a party or allowed to appear or intervene in the proceeding. If the agency that is taking action and the agency that is conducting the adjudicative proceeding are separate agencies, the agency that is taking action is a party and the agency that is conducting the adjudicative proceeding is not a party.

#### **“Person”**

11405.70. “Person” includes an individual, partnership, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character.

#### **“Presiding officer”**

11405.80. “Presiding officer” means the agency head, member of the agency head, administrative law judge, administrative law judge, or other person who presides in an adjudicative proceeding.

### ***Article 3. Application of Chapter***

#### **Decision requiring evidentiary hearing**

11410.10. This chapter applies to a decision by an agency if, under the federal or state Constitution or a federal or state statute, an evidentiary hearing for determination of facts is required for formulation and issuance of the decision.

#### **Applicability to agencies**

11410.20. Except as otherwise expressly provided by statute:

(a) This chapter applies to all agencies of the state.

(b) This chapter does not apply to the Legislature, the courts or judicial branch, or the Governor or office of the Governor.

#### **Applicability to local agencies**

11410.30. (a) As used in this section, “local agency” means a county, city, district, public authority, public agency, or other political subdivision or public corporation in the state other than the state.

(b) This chapter does not apply to a local agency except to the extent the provisions are made applicable by statute.

(c) This chapter applies to an agency created or appointed by joint or concerted action of the state and one or more local agencies.

#### **Adoption of chapter by exempt agency**

11410.40. Notwithstanding any other provision of this article, by regulation, ordinance, or other appropriate action, an agency may adopt this chapter or any of its provisions for the formulation and issuance of a decision, even though the agency or decision is exempt from application of this chapter.

#### **Applicability to specified proceedings**

11410.50. This chapter applies to an adjudicative proceeding required to be conducted under Chapter 5 (commencing with Section 11500) unless the statutes relating to the proceeding provide otherwise.

#### **Quasi-public entity**

11410.60. (a) As used in this section, “quasi-public entity” means an entity, other than a governmental agency, whether characterized by statute as a public corporation, public instrumentality, or otherwise, that is expressly created by statute for the purpose of administration of a state function.

(b) This chapter applies to an adjudicative proceeding conducted by a quasi-public entity if all of the following conditions are satisfied:

(1) A statute vests the power of decision in the quasi-public entity.

(2) A statute, the United States Constitution, or the California Constitution, requires an evidentiary hearing for determination of facts for formulation and issuance of the decision. Nothing in this section is intended to create an evidentiary hearing requirement that is not otherwise statutorily or constitutionally imposed.

(3) The decision is not otherwise subject to administrative review in an adjudicative proceeding to which this chapter applies.

(c) For the purpose of application of this chapter to a decision by a quasi-public entity:  
(1) “Agency,” as defined in Section 11405.30, also includes the quasi-public entity.  
(2) “Regulation” includes a rule promulgated by the quasi-public entity.  
(3) Article 8 (commencing with Section 11435.05), requiring language assistance in an adjudicative proceeding, applies to a quasi-public entity to the same extent as a state agency under Section 11018.

(d) This section shall be strictly construed to effectuate the intent of the Legislature to apply this chapter only to a decision by a quasi-public entity that is expressly created by statute for the purpose of administration of a state function.

(e) This section shall not apply to a decision made on authority of an approved plan of operations of a quasi-public entity that is subject to the regulation or supervision of the Insurance Commissioner.

#### ***Article 4. Governing Procedure***

##### **Determination of procedure**

11415.10. (a) The governing procedure by which an agency conducts an adjudicative proceeding is determined by the statutes and regulations applicable to that proceeding. If no other governing procedure is provided by statute or regulation, an agency may conduct an adjudicative proceeding under the administrative adjudication provisions of the Administrative Procedure Act.

(b) This chapter supplements the governing procedure by which an agency conducts an adjudicative proceeding.

##### **Statute to prevail over provision of chapter**

11415.20. A state statute or a federal statute or regulation applicable to a particular agency or decision prevails over a conflicting or inconsistent provision of this chapter.

##### **Actions by Governor to avoid loss or delay of federal funds**

11415.30. (a) To the extent necessary to avoid a loss or delay of funds or services from the federal government that would otherwise be available to the state, the Governor may do any of the following by executive order:

(1) Suspend, in whole or in part, any administrative adjudication provision of the Administrative Procedure Act.

(2) Adopt a rule of procedure that will avoid the loss or delay.

(b) The Governor shall rescind an executive order issued under this section as soon as it is no longer necessary to prevent the loss or delay of funds or services from the federal government.

(c) If an administrative adjudication provision is suspended or rule of procedure is adopted pursuant to this section, the Governor shall promptly report the suspension or adoption to the Legislature. The report shall include recommendations concerning any legislation that may be necessary to conform the provision to federal law.

##### **Waiver of right conferred by provisions**

11415.40. Except to the extent prohibited by another statute or regulation, a person may waive a right conferred on the person by the administrative adjudication provisions of the Administrative Procedure Act.



### **Procedure for decision for which adjudicative proceeding not required**

11415.50. (a) An agency may provide any appropriate procedure for a decision for which an adjudicative proceeding is not required.

(b) An adjudicative proceeding is not required for informal factfinding or an informal investigatory hearing, or a decision to initiate or not to initiate an investigation, prosecution, or other proceeding before the agency, another agency, or a court, whether in response to an application for an agency decision or otherwise.

### **Decision by settlement**

11415.60. (a) An agency may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding. Subject to subdivision (c), the settlement may be on any terms the parties determine are appropriate. Notwithstanding any other provision of law, no evidence of an offer of compromise or settlement made in settlement negotiations is admissible in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose, and no evidence of conduct or statements made in settlement negotiations is admissible to prove liability for any loss or damage except to the extent provided in Section 1152 of the Evidence Code. Nothing in this subdivision makes inadmissible any public document created by a public agency.

(b) A settlement may be made before or after issuance of an agency pleading, except that in an adjudicative proceeding to determine whether an occupational license should be revoked, suspended, limited, or conditioned, a settlement may not be made before issuance of the agency pleading. A settlement may be made before, during, or after the hearing.

(c) A settlement is subject to any necessary agency approval. An agency head may delegate the power to approve a settlement. The terms of a settlement may not be contrary to statute or regulation, except that the settlement may include sanctions the agency would otherwise lack power to impose.

## ***Article 5. Alternative Dispute Resolution***

### **Mediation or arbitration**

11420.10. (a) An agency, with the consent of all the parties, may refer a dispute that is the subject of an adjudicative proceeding for resolution by any of the following means:

(1) Mediation by a neutral mediator.

(2) Binding arbitration by a neutral arbitrator. An award in a binding arbitration is subject to judicial review in the manner provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(3) Nonbinding arbitration by a neutral arbitrator. The arbitrator's decision in a nonbinding arbitration is final unless within 30 days after the arbitrator delivers the award to the agency head a party requests that the agency conduct a de novo adjudicative proceeding. If the decision in the de novo proceeding is not more favorable to the party electing the de novo proceeding, the party shall pay the costs and fees specified in Section 1141.21 of the Code of Civil Procedure insofar as applicable in the adjudicative proceeding.

(b) If another statute requires mediation or arbitration in an adjudicative proceeding, that statute prevails over this section.

(c) This section does not apply in an adjudicative proceeding to the extent an agency by regulation provides that this section is not applicable in a proceeding of the agency.

### **Model regulations for alternative dispute resolution**

11420.20. (a) The Office of Administrative Hearings shall adopt and promulgate model regulations for alternative dispute resolution under this article. The model regulations govern alternative dispute resolution by an agency under this article, except to the extent the agency by regulation provides inconsistent rules or provides that the model regulations are not applicable in a proceeding of the agency.

(b) The model regulations shall include provisions for selection and compensation of a mediator or arbitrator, qualifications of a mediator or arbitrator, and confidentiality of the mediation or arbitration proceeding.

### **Protection of communications**

11420.30. Notwithstanding any other provision of law, a communication made in alternative dispute resolution under this article is protected to the following extent:

(a) Anything said, any admission made, and any document prepared in the course of, or pursuant to, mediation under this article is a confidential communication, and a party to the mediation has a privilege to refuse to disclose and to prevent another from disclosing the communication, whether in an adjudicative proceeding, civil action, or other proceeding. This subdivision does not limit the admissibility of evidence if all parties to the proceedings consent.

(b) No reference to nonbinding arbitration proceedings, a decision of the arbitrator that is rejected by a party's request for a de novo adjudicative proceeding, the evidence produced, or any other aspect of the arbitration may be made in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose.

(c) No mediator or arbitrator is competent to testify in a subsequent administrative or civil proceeding as to any statement, conduct, decision, or order occurring at, or in conjunction with, the alternative dispute resolution.

(d) Evidence otherwise admissible outside of alternative dispute resolution under this article is not inadmissible or protected from disclosure solely by reason of its introduction or use in alternative dispute resolution under this article.

## ***Article 6. Administrative Adjudication Bill of Rights***

### **Required procedures and rights of persons affected**

11425.10. (a) The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements:

(1) The agency shall give the person to which the agency action is directed notice and an opportunity to be heard, including the opportunity to present and rebut evidence.

(2) The agency shall make available to the person to which the agency action is directed a copy of the governing procedure, including a statement whether Chapter 5 (commencing with Section 11500) is applicable to the proceeding.

(3) The hearing shall be open to public observation as provided in Section 11425.20.

(4) The adjudicative function shall be separated from the investigative, prosecutorial, and advocacy functions within the agency as provided in Section 11425.30.

(5) The presiding officer is subject to disqualification for bias, prejudice, or interest as provided in Section 11425.40.

(6) The decision shall be in writing, be based on the record, and include a statement of the

factual and legal basis of the decision as provided in Section 11425.50.

(7) A decision may not be relied on as precedent unless the agency designates and indexes the decision as precedent as provided in Section 11425.60.

(8) Ex parte communications shall be restricted as provided in Article 7 (commencing with Section 11430.10).

(9) Language assistance shall be made available as provided in Article 8 (commencing with Section 11435.05) by an agency described in Section 11018 or 11435.15.

(b) The requirements of this section apply to the governing procedure by which an agency conducts an adjudicative proceeding without further action by the agency, and prevail over a conflicting or inconsistent provision of the governing procedure, subject to Section 11415.20. The governing procedure by which an agency conducts an adjudicative proceeding may include provisions equivalent to, or more protective of the rights of the person to which the agency action is directed than, the requirements of this section.

### **Hearings open to public; Order for closure**

11425.20. (a) A hearing shall be open to public observation. Nothing in this subdivision limits the authority of the presiding officer to order closure of a hearing or make other protective orders to the extent necessary or proper for any of the following purposes:

(1) To satisfy the United States Constitution, the California Constitution, federal or state statute, or other law, including but not limited to laws protecting privileged, confidential, or other protected information.

(2) To ensure a fair hearing in the circumstances of the particular case.

(3) To conduct the hearing, including the manner of examining witnesses, in a way that is appropriate to protect a minor witness or a witness with a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code, from intimidation or other harm, taking into account the rights of all persons.

(b) To the extent a hearing is conducted by telephone, television, or other electronic means, subdivision (a) is satisfied if members of the public have an opportunity to do both of the following:

(1) At reasonable times, hear or inspect the agency's record, and inspect any transcript obtained by the agency.

(2) Be physically present at the place where the presiding officer is conducting the hearing.

(c) This section does not apply to a prehearing conference, settlement conference, or proceedings for alternative dispute resolution other than binding arbitration.

### **Specified persons not to serve as presiding officer**

11425.30. (a) A person may not serve as presiding officer in an adjudicative proceeding in any of the following circumstances:

(1) The person has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage.

(2) The person is subject to the authority, direction, or discretion of a person who has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage.

(b) Notwithstanding subdivision (a):

(1) A person may serve as presiding officer at successive stages of an adjudicative

proceeding.

(2) A person who has participated only as a decisionmaker or as an advisor to a decisionmaker in a determination of probable cause or other equivalent preliminary determination in an adjudicative proceeding or its preadjudicative stage may serve as presiding officer in the proceeding.

(c) The provisions of this section governing separation of functions as to the presiding officer also govern separation of functions as to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

### **Disqualification of presiding officer**

11425.40. (a) The presiding officer is subject to disqualification for bias, prejudice, or interest in the proceeding.

(b) It is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice, or interest, that the presiding officer:

(1) Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group.

(2) Has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding.

(3) Has as a lawyer or public official participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding.

(c) The provisions of this section governing disqualification of the presiding officer also govern disqualification of the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(d) An agency that conducts an adjudicative proceeding may provide by regulation for peremptory challenge of the presiding officer.

### **Decision to be in writing; Statement of factual and legal basis**

11425.50. (a) The decision shall be in writing and shall include a statement of the factual and legal basis for the decision.

(b) The statement of the factual basis for the decision may be in the language of, or by reference to, the pleadings. If the statement is no more than mere repetition or paraphrase of the relevant statute or regulation, the statement shall be accompanied by a concise and explicit statement of the underlying facts of record that support the decision. If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it.

(c) The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the proceeding. The presiding officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

(d) Nothing in this section limits the information that may be contained in the decision, including a summary of evidence relied on.

(e) A penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule subject to Chapter 3.5 (commencing with Section 11340) unless it has been adopted as a regulation pursuant to Chapter 3.5 (commencing with Section 11340).

### **Decisions relied on as precedents; Index of precedent decisions**

11425.60. (a) A decision may not be expressly relied on as precedent unless it is designated as a precedent decision by the agency.

(b) An agency may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur. Designation of a decision or part of a decision as a precedent decision is not rulemaking and need not be done under Chapter 3.5 (commencing with Section 11340). An agency's designation of a decision or part of a decision, or failure to designate a decision or part of a decision, as a precedent decision is not subject to judicial review.

(c) An agency shall maintain an index of significant legal and policy determinations made in precedent decisions. The index shall be updated not less frequently than annually, unless no precedent decision has been designated since the last preceding update. The index shall be made available to the public by subscription, and its availability shall be publicized annually in the California Regulatory Notice Register.

(d) This section applies to decisions issued on or after July 1, 1997. Nothing in this section precludes an agency from designating and indexing as a precedent decision a decision issued before July 1, 1997.

## ***Article 7. Ex Parte Communications***

### **Ex parte communications**

11430.10. (a) While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication.

(b) Nothing in this section precludes a communication, including a communication from an employee or representative of an agency that is a party, made on the record at the hearing.

(c) For the purpose of this section, a proceeding is pending from the issuance of the agency's pleading, or from an application for an agency decision, whichever is earlier.

### **Permissible ex parte communications**

11430.20. A communication otherwise prohibited by Section 11430.10 is permissible in any of the following circumstances:

(a) The communication is required for disposition of an ex parte matter specifically authorized by statute.

(b) The communication concerns a matter of procedure or practice, including a request for a continuance, that is not in controversy.

**Permissible ex parte communication from agency that is party**

11430.30. A communication otherwise prohibited by Section 11430.10 from an employee or representative of an agency that is a party to the presiding officer is permissible in any of the following circumstances:

(a) The communication is for the purpose of assistance and advice to the presiding officer from a person who has not served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage. An assistant or advisor may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record.

(b) The communication is for the purpose of advising the presiding officer concerning a settlement proposal advocated by the advisor.

(c) The communication is for the purpose of advising the presiding officer concerning any of the following matters in an adjudicative proceeding that is nonprosecutorial in character:

(1) The advice involves a technical issue in the proceeding and the advice is necessary for, and is not otherwise reasonably available to, the presiding officer, provided the content of the advice is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

(2) The advice involves an issue in a proceeding of the San Francisco Bay Conservation and Development Commission, California Tahoe Regional Planning Agency, Delta Protection Commission, Water Resources Control Board, or a regional water quality control board.

**Disclosure of communication received while proceeding is pending**

11430.40. If, while the proceeding is pending but before serving as presiding officer, a person receives a communication of a type that would be in violation of this article if received while serving as presiding officer, the person, promptly after starting to serve, shall disclose the content of the communication on the record and give all parties an opportunity to address it in the manner provided in Section 11430.50.

**Communication in violation of provisions**

11430.50. (a) If a presiding officer receives a communication in violation of this article, the presiding officer shall make all of the following a part of the record in the proceeding:

(1) If the communication is written, the writing and any written response of the presiding officer to the communication.

(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication.

(b) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.

(c) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:

(1) The party shall be allowed to comment on the communication.

(2) The presiding officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

**Prohibited communication as grounds to disqualify presiding officer**

11430.60. Receipt by the presiding officer of a communication in violation of this article may

be grounds for disqualification of the presiding officer. If the presiding officer is disqualified, the portion of the record pertaining to the ex parte communication may be sealed by protective order of the disqualified presiding officer.

#### **Agency head delegated to hear or decide proceeding**

11430.70. (a) Subject to subdivision (b), the provisions of this article governing ex parte communications to the presiding officer also govern ex parte communications in an adjudicative proceeding to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) An ex parte communication to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated is permissible in an individualized ratemaking proceeding if the content of the communication is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

#### **Communication between presiding officer and agency head delegated to hear proceeding**

11430.80. (a) There shall be no communication, direct or indirect, while a proceeding is pending regarding the merits of any issue in the proceeding, between the presiding officer and the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) This section does not apply where the agency head or other person or body to which the power to hear or decide in the proceeding is delegated serves as both presiding officer and agency head, or where the presiding officer does not issue a decision in the proceeding.

### ***Article 8. Language Assistance***

#### **“Language assistance”**

11435.05. As used in this article, “language assistance” means oral interpretation or written translation into English of a language other than English or of English into another language for a party or witness who cannot speak or understand English or who can do so only with difficulty.

#### **Interpretation for deaf or hard-of-hearing persons**

11435.10. Nothing in this article limits the application or effect of Section 754 of the Evidence Code to interpretation for a deaf or hard-of-hearing party or witness in an adjudicative proceeding.

#### **Provision of language assistance by state agencies**

11435.15. (a) The following state agencies shall provide language assistance in adjudicative proceedings to the extent provided in this article:

- Agricultural Labor Relations Board
- Department of Alcohol and Drug Abuse
- State Athletic Commission
- California Unemployment Insurance Appeals Board
- Board of Prison Terms
- State Board of Barbering and Cosmetology
- State Department of Developmental Services
- Public Employment Relations Board

Franchise Tax Board  
State Department of Health Services  
Department of Housing and Community Development  
Department of Industrial Relations  
State Department of Mental Health  
Department of Motor Vehicles  
Notary Public Section, Office of the Secretary of State  
Public Utilities Commission  
Office of Statewide Health Planning and Development  
State Department of Social Services  
Workers' Compensation Appeals Board  
Department of the Youth Authority  
Youthful Offender Parole Board  
Department of Insurance  
State Personnel Board  
California Board of Podiatric Medicine  
Board of Psychology

(b) Nothing in this section prevents an agency other than an agency listed in subdivision (a) from electing to adopt any of the procedures in this article, provided that any selection of an interpreter is subject to Section 11435.30.

(c) Nothing in this section prohibits an agency from providing an interpreter during a proceeding to which this chapter does not apply, including an informal factfinding or informal investigatory hearing.

(d) This article applies to an agency listed in subdivision (a) notwithstanding a general provision that this chapter does not apply to some or all of an agency's adjudicative proceedings.

### **Hearing or medical examination to be conducted in English**

11435.20. (a) The hearing, or any medical examination conducted for the purpose of determining compensation or monetary award, shall be conducted in English.

(b) If a party or the party's witness does not proficiently speak or understand English and before commencement of the hearing or medical examination requests language assistance, an agency subject to the language assistance requirement of this article shall provide the party or witness an interpreter.

### **Cost of providing interpreter**

11435.25. (a) The cost of providing an interpreter under this article shall be paid by the agency having jurisdiction over the matter if the presiding officer so directs, otherwise by the party at whose request the interpreter is provided.

(b) The presiding officer's decision to direct payment shall be based upon an equitable consideration of all the circumstances in each case, such as the ability of the party in need of the interpreter to pay.

(c) Notwithstanding any other provision of this section, in a hearing before the Workers' Compensation Appeals Board or the Division of Workers' Compensation relating to workers' compensation claims, the payment of the costs of providing an interpreter shall be governed by the rules and regulations promulgated by the Workers' Compensation Appeals Board or the Administrative Director of the Division of Workers' Compensation, as appropriate.



**Publication of list of certified interpreters**

11435.30. (a) The State Personnel Board shall establish, maintain, administer, and publish annually an updated list of certified administrative hearing interpreters it has determined meet the minimum standards in interpreting skills and linguistic abilities in languages designated pursuant to Section 11435.40. Any interpreter so listed may be examined by each employing agency to determine the interpreter's knowledge of the employing agency's technical program terminology and procedures.

(b) Court interpreters certified pursuant to Section 68562, and interpreters listed on the State Personnel Board's recommended lists of court and administrative hearing interpreters prior to July 1, 1993, shall be deemed certified for purposes of this section.

**Publication of list of certified medical examination interpreters**

11435.35. (a) The State Personnel Board shall establish, maintain, administer, and publish annually, an updated list of certified medical examination interpreters it has determined meet the minimum standards in interpreting skills and linguistic abilities in languages designated pursuant to Section 11435.40.

(b) Court interpreters certified pursuant to Section 68562 and administrative hearing interpreters certified pursuant to Section 11435.30 shall be deemed certified for purposes of this section.

**Designation of languages for certification**

11435.40. (a) The State Personnel Board shall designate the languages for which certification shall be established under Sections 11435.30 and 11435.35. The languages designated shall include, but not be limited to, Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese until the State Personnel Board finds that there is an insufficient need for interpreting assistance in these languages.

(b) The language designations shall be based on the following:

- (1) The language needs of non-English-speaking persons appearing before the administrative agencies, as determined by consultation with the agencies.
- (2) The cost of developing a language examination.
- (3) The availability of experts needed to develop a language examination.
- (4) Other information the board deems relevant.

**Application fees to take interpreter examinations**

11435.45. (a) The State Personnel Board shall establish and charge fees for applications to take interpreter examinations and for renewal of certifications. The purpose of these fees is to cover the annual projected costs of carrying out this article. The fees may be adjusted each fiscal year by a percent that is equal to or less than the percent change in the California Necessities Index prepared by the Commission on State Finance.

(b) Each certified administrative hearing interpreter and each certified medical examination interpreter shall pay a fee, due on July 1 of each year, for the renewal of the certification. Court interpreters certified under Section 68562 shall not pay any fees required by this section.

(c) If the amount of money collected in fees is not sufficient to cover the costs of carrying out this article, the board shall charge and be reimbursed a pro rata share of the additional costs

by the state agencies that conduct administrative hearings.

### **Removal of person from list of certified interpreters**

1435.50. The State Personnel Board may remove the name of a person from the list of certified interpreters if any of the following conditions occurs:

- (a) The person is deceased.
- (b) The person notifies the board that the person is unavailable for work.
- (c) The person does not submit a renewal fee as required by Section 11435.45.

### **Qualification and use of noncertified interpreters**

11435.55. (a) An interpreter used in a hearing shall be certified pursuant to Section 11435.30. However, if an interpreter certified pursuant to Section 11435.30 cannot be present at the hearing, the hearing agency shall have discretionary authority to provisionally qualify and use another interpreter.

(b) An interpreter used in a medical examination shall be certified pursuant to Section 11435.35. However, if an interpreter certified pursuant to Section 11435.35 cannot be present at the medical examination, the physician provisionally may use another interpreter if that fact is noted in the record of the medical evaluation.

### **Party to be advised of right to interpreter**

11435.60. Every agency subject to the language assistance requirement of this article shall advise each party of the right to an interpreter at the same time that each party is advised of the hearing date or medical examination. Each party in need of an interpreter shall also be encouraged to give timely notice to the agency conducting the hearing or medical examination so that appropriate arrangements can be made.

### **Rules of confidentiality applicable to interpreters**

11435.65. (a) The rules of confidentiality of the agency, if any, that apply in an adjudicative proceeding shall apply to any interpreter in the hearing or medical examination, whether or not the rules so state.

(b) The interpreter shall not have had any involvement in the issues of the case prior to the hearing.

## ***Article 9. General Procedural Provisions***

### **Review of decision**

11440.10. (a) The agency head may do any of the following with respect to a decision of the presiding officer or the agency:

- (1) Determine to review some but not all issues, or not to exercise any review.
- (2) Delegate its review authority to one or more persons.
- (3) Authorize review by one or more persons, subject to further review by the agency head.

(b) By regulation an agency may mandate review, or may preclude or limit review, of a decision of the presiding officer or the agency.

### **Service of writing; Notice**

11440.20. Service of a writing on, or giving of a notice to, a person in a procedure provided in this chapter is subject to the following provisions:

(a) The writing or notice shall be delivered personally or sent by mail or other means to the person at the person's last known address or, if the person is a party with an attorney or other authorized representative of record in the proceeding, to the party's attorney or other authorized representative. If a party is required by statute or regulation to maintain an address with an agency, the party's last known address is the address maintained with the agency.

(b) Unless a provision specifies the form of mail, service or notice by mail may be by first-class mail, registered mail, or certified mail, by mail delivery service, by facsimile transmission if complete and without error, or by other electronic means as provided by regulation, in the discretion of the sender.

### **Conduct of hearing by telephone, television, or other electronic means**

11440.30. (a) The presiding officer may conduct all or part of a hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits.

(b) The presiding officer may not conduct all or part of a hearing by telephone, television, or other electronic means if a party objects.

### **Proceedings involving sexual offenses; Limitations on evidence**

11440.40. (a) In any proceeding under subdivision (h) or (i) of Section 12940, or Section 19572 or 19702, alleging conduct that constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is subject to all of the following limitations:

(1) The evidence is not discoverable unless it is to be offered at a hearing to attack the credibility of the complainant as provided for under subdivision (b). This paragraph is intended only to limit the scope of discovery; it is not intended to affect the methods of discovery allowed by statute.

(2) The evidence is not admissible at the hearing unless offered to attack the credibility of the complainant as provided for under subdivision (b). Reputation or opinion evidence regarding the sexual behavior of the complainant is not admissible for any purpose.

(b) Evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is presumed inadmissible absent an offer of proof establishing its relevance and reliability and that its probative value is not substantially outweighed by the probability that its admission will create substantial danger of undue prejudice or confuse the issue.

(c) As used in this section "complainant" means a person claiming to have been subjected to conduct that constitutes sexual harassment, sexual assault, or sexual battery.

### **Proceedings involving accidents; Limitations on evidence**

11440.45. (a) In any proceedings pursuant to this chapter or Chapter 5 (commencing with Section 11500), the portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident and made to that person or to the family of that person shall be inadmissible as evidence of an admission of liability. A statement of fault, however, which is part of, or in addition to, any of the above shall not be inadmissible pursuant to this section.

(b) For purposes of this section:

(1) “Accident” means an occurrence resulting in injury or death to one or more persons which is not the result of willful action by a party.

(2) “Benevolent gestures” means actions which convey a sense of compassion or commiseration emanating from humane impulses.

(3) “Family” means the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted children of parent, or spouse’s parents of an injured party.

### **Intervention; Grant of motion; Conditions**

11440.50. (a) This section applies in adjudicative proceedings of an agency if the agency by regulation provides that this section is applicable in the proceedings.

(b) The presiding officer shall grant a motion for intervention if all of the following conditions are satisfied:

(1) The motion is submitted in writing, with copies served on all parties named in the agency’s pleading.

(2) The motion is made as early as practicable in advance of the hearing. If there is a prehearing conference, the motion shall be made in advance of the prehearing conference and shall be resolved at the prehearing conference.

(3) The motion states facts demonstrating that the applicant’s legal rights, duties, privileges, or immunities will be substantially affected by the proceeding or that the applicant qualifies as an intervenor under a statute or regulation.

(4) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

(c) If an applicant qualifies for intervention, the presiding officer may impose conditions on the intervenor’s participation in the proceeding, either at the time that intervention is granted or at a subsequent time. Conditions may include the following:

(1) Limiting the intervenor’s participation to designated issues in which the intervenor has a particular interest demonstrated by the motion.

(2) Limiting or excluding the use of discovery, cross-examination, and other procedures involving the intervenor so as to promote the orderly and prompt conduct of the proceeding.

(3) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceeding.

(4) Limiting or excluding the intervenor’s participation in settlement negotiations.

(d) As early as practicable in advance of the hearing the presiding officer shall issue an order granting or denying the motion for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of an order granting, denying, or modifying intervention to the applicant and to all parties.

(e) Whether the interests of justice and the orderly and prompt conduct of the proceedings will be impaired by allowing intervention is a determination to be made in the sole discretion, and based on the knowledge and judgment at that time, of the presiding officer. The determination is not subject to administrative or judicial review.

(f) Nothing in this section precludes an agency from adopting a regulation that permits participation by a person short of intervention as a party, subject to Article 7 (commencing with Section 11430.10) of Chapter 4.5.

**Indication of person paying for written communication**

11440.60. (a) For purposes of this section, the following terms have the following meaning:

(1) “Quasi-judicial proceeding” means any of the following:

(A) A proceeding to determine the rights or duties of a person under existing laws, regulations, or policies.

(B) A proceeding involving the issuance, amendment, or revocation of a permit or license.

(C) A proceeding to enforce compliance with existing law or to impose sanctions for violations of existing law.

(D) A proceeding at which action is taken involving the purchase or sale of property, goods, or services by an agency.

(E) A proceeding at which an action is taken awarding a grant or a contract.

(2) “Written communication” means any report, study, survey, analysis, letter, or any other written document.

(b) Any person submitting a written communication, which is specifically generated for the purpose of being presented at the agency hearing to which it is being communicated, to a state agency in a quasi-judicial proceeding that is directly paid for by anyone other than the person who submitted the written communication shall clearly indicate any person who paid to produce the written communication.

(c) A state agency may refuse or ignore a written communication submitted by an attorney or any other authorized representative on behalf of a client in a quasi-judicial proceeding, unless the written communication clearly indicates the client on whose behalf the communication is submitted to the state agency.

***Article 10. Informal Hearing*****Legislative findings and declarations**

11445.10. (a) Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the informal hearing procedure provided in this article.

(b) The Legislature finds and declares the following:

(1) The informal hearing procedure is intended to satisfy due process and public policy requirements in a manner that is simpler and more expeditious than hearing procedures otherwise required by statute, for use in appropriate circumstances.

(2) The informal hearing procedure provides a forum in the nature of a conference in which a party has an opportunity to be heard by the presiding officer.

(3) The informal hearing procedure provides a forum that may accommodate a hearing where by regulation or statute a member of the public may participate without appearing or intervening as a party.

**Circumstances permitting use of informal hearing procedure**

11445.20. Subject to Section 11445.30, an agency may use an informal hearing procedure in any of the following proceedings, if in the circumstances its use does not violate another statute or the federal or state Constitution:

(a) A proceeding where there is no disputed issue of material fact.

(b) A proceeding where there is a disputed issue of material fact, if the matter is limited to

any of the following:

- (1) A monetary amount of not more than one thousand dollars (\$1,000).
- (2) A disciplinary sanction against a student that does not involve expulsion from an academic institution or suspension for more than 10 days.
- (3) A disciplinary sanction against an employee that does not involve discharge from employment, demotion, or suspension for more than 5 days.
- (4) A disciplinary sanction against a licensee that does not involve an actual revocation of a license or an actual suspension of a license for more than five days. Nothing in this section precludes an agency from imposing a stayed revocation or a stayed suspension of a license in an informal hearing.
- (c) A proceeding where, by regulation, the agency has authorized use of an informal hearing.
- (d) A proceeding where an evidentiary hearing for determination of facts is not required by statute but where the agency determines the federal or state Constitution may require a hearing.

#### **Notice of informal procedure**

- 11445.30. (a) The notice of hearing shall state the agency's selection of the informal hearing procedure.
- (b) Any objection of a party to use of the informal hearing procedure shall be made in the party's pleading.
- (c) An objection to use of the informal hearing procedure shall be resolved by the presiding officer before the hearing on the basis of the pleadings and any written submissions in support of the pleadings. An objection to use of the informal hearing procedure in a disciplinary proceeding involving an occupational license shall be resolved in favor of the licensee.

#### **Application of procedures otherwise required**

- 11445.40. (a) Except as provided in this article, the hearing procedures otherwise required by statute for an adjudicative proceeding apply to an informal hearing.
- (b) In an informal hearing the presiding officer shall regulate the course of the proceeding. The presiding officer shall permit the parties and may permit others to offer written or oral comments on the issues. The presiding officer may limit the use of witnesses, testimony, evidence, and argument, and may limit or eliminate the use of pleadings, intervention, discovery, prehearing conferences, and rebuttal.

#### **Denial of use of informal procedure; Conversion to formal hearing; Cross-examination**

- 11445.50. (a) The presiding officer may deny use of the informal hearing procedure, or may convert an informal hearing to a formal hearing after an informal hearing is commenced, if it appears to the presiding officer that cross-examination is necessary for proper determination of the matter and that the delay, burden, or complication due to allowing cross-examination in the informal hearing will be more than minimal.
- (b) An agency, by regulation, may specify categories of cases in which cross-examination is deemed not necessary for proper determination of the matter under the informal hearing procedure. The presiding officer may allow cross-examination of witnesses in an informal hearing notwithstanding an agency regulation if it appears to the presiding officer that in the circumstances cross-examination is necessary for proper determination of the matter.

(c) The actions of the presiding officer under this section are not subject to judicial review.

### **Identity of witnesses or other sources**

11445.60. (a) If the presiding officer has reason to believe that material facts are in dispute, the presiding officer may require a party to state the identity of the witnesses or other sources through which the party would propose to present proof if the proceeding were converted to a formal or other applicable hearing procedure. If disclosure of a fact, allegation, or source is privileged or expressly prohibited by a regulation, statute, or the federal or state Constitution, the presiding officer may require the party to indicate that confidential facts, allegations, or sources are involved, but not to disclose the confidential facts, allegations, or sources.

(b) If a party has reason to believe that essential facts must be obtained in order to permit an adequate presentation of the case, the party may inform the presiding officer regarding the general nature of the facts and the sources from which the party would propose to obtain the facts if the proceeding were converted to a formal or other applicable hearing procedure.

## ***Article 11. Subpoenas***

### **Application of article**

11450.05. (a) This article applies in an adjudicative proceeding required to be conducted under Chapter 5 (commencing with Section 11500).

(b) An agency may use the subpoena procedure provided in this article in an adjudicative proceeding not required to be conducted under Chapter 5 (commencing with Section 11500), in which case all the provisions of this article apply including, but not limited to, issuance of a subpoena at the request of a party or by the attorney of record for a party under Section 11450.20.

### **Issuance for attendance or production of documents**

11450.10. (a) Subpoenas and subpoenas duces tecum may be issued for attendance at a hearing and for production of documents at any reasonable time and place or at a hearing.

(b) The custodian of documents that are the subject of a subpoena duces tecum may satisfy the subpoena by delivery of the documents or a copy of the documents, or by making the documents available for inspection or copying, together with an affidavit in compliance with Section 1561 of the Evidence Code.

### **Persons who may issue subpoenas; Service**

11450.20. (a) Subpoenas and subpoenas duces tecum shall be issued by the agency or presiding officer at the request of a party, or by the attorney of record for a party, in accordance with Sections 1985 to 1985.4, inclusive, of the Code of Civil Procedure.

(b) The process extends to all parts of the state and shall be served in accordance with Sections 1987 and 1988 of the Code of Civil Procedure. A subpoena or subpoena duces tecum may also be delivered by certified mail return receipt requested or by messenger. Service by messenger shall be effected when the witness acknowledges receipt of the subpoena to the sender, by telephone, by mail, or in person, and identifies himself or herself either by reference to date of birth and driver's license number or Department of Motor Vehicles identification number, or the sender may verify receipt of the subpoena by obtaining other identifying information from the recipient. The sender shall make a written notation of the acknowledgment. A subpoena

issued and acknowledged pursuant to this section has the same force and effect as a subpoena personally served. Failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as a contempt and the subpoena may so state. A party requesting a continuance based upon the failure of a witness to appear at the time and place required for the appearance or testimony pursuant to a subpoena, shall prove that the party has complied with this section. The continuance shall only be granted for a period of time that would allow personal service of the subpoena and in no event longer than that allowed by law.

(c) No witness is obliged to attend unless the witness is a resident of the state at the time of service.

### **Objection to subpoena; Motion for protective order; Motion to quash**

11450.30. (a) A person served with a subpoena or a subpoena duces tecum may object to its terms by a motion for a protective order, including a motion to quash.

(b) The objection shall be resolved by the presiding officer on terms and conditions that the presiding officer declares. The presiding officer may make another order that is appropriate to protect the parties or the witness from unreasonable or oppressive demands, including violations of the right to privacy.

(c) A subpoena or a subpoena duces tecum issued by the agency on its own motion may be quashed by the agency.

### **Witness's mileage and fees**

11450.40. A witness appearing pursuant to a subpoena or a subpoena duces tecum, other than a party, shall receive for the appearance the following mileage and fees, to be paid by the party at whose request the witness is subpoenaed:

(a) The same mileage allowed by law to a witness in a civil case.

(b) The same fees allowed by law to a witness in a civil case. This subdivision does not apply to an officer or employee of the state or a political subdivision of the state.

### **Written notice to witness to attend; Service**

11450.50. (a) In the case of the production of a party to the record of a proceeding or of a person for whose benefit a proceeding is prosecuted or defended, the service of a subpoena on the witness is not required if written notice requesting the witness to attend, with the time and place of the hearing, is served on the attorney of the party or person.

(b) Service of written notice to attend under this section shall be made in the manner and is subject to the conditions provided in Section 1987 of the Code of Civil Procedure for service of written notice to attend in a civil action or proceeding.

## ***Article 12. Enforcement of Orders and Sanctions***

### **Grounds for contempt sanction**

11455.10. A person is subject to the contempt sanction for any of the following in an adjudicative proceeding before an agency:

(a) Disobedience of or resistance to a lawful order.

(b) Refusal to take the oath or affirmation as a witness or thereafter refusal to be examined.

(c) Obstruction or interruption of the due course of the proceeding during a hearing or



near the place of the hearing by any of the following:

- (1) Disorderly, contemptuous, or insolent behavior toward the presiding officer while conducting the proceeding.
- (2) Breach of the peace, boisterous conduct, or violent disturbance.
- (3) Other unlawful interference with the process or proceedings of the agency.
- (d) Violation of the prohibition of ex parte communications under Article 7 (commencing with Section 11430.10).
- (e) Failure or refusal, without substantial justification, to comply with a deposition order, discovery request, subpoena, or other order of the presiding officer, or moving, without substantial justification, to compel discovery.

### **Certification of facts to justify contempt sanction; Other procedure**

11455.20. (a) The presiding officer or agency head may certify the facts that justify the contempt sanction against a person to the superior court in and for the county where the proceeding is conducted. The court shall thereupon issue an order directing the person to appear before the court at a specified time and place, and then and there to show cause why the person should not be punished for contempt. The order and a copy of the certified statement shall be served on the person. Upon service of the order and a copy of the certified statement, the court has jurisdiction of the matter.

(b) The same proceedings shall be had, the same penalties may be imposed, and the person charged may purge the contempt in the same way, as in the case of a person who has committed a contempt in the trial of a civil action before a superior court.

### **Bad faith actions; Order to pay expenses including attorney's fees**

11455.30. (a) The presiding officer may order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay as defined in Section 128.5 of the Code of Civil Procedure.

(b) The order, or denial of an order, is subject to judicial review in the same manner as a decision in the proceeding. The order is enforceable in the same manner as a money judgment or by the contempt sanction.

## ***Article 13. Emergency Decision***

### **Conduct of proceeding under emergency procedure**

11460.10. Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the emergency decision procedure provided in this article.

### **Emergency decision**

11460.20. (a) An agency may issue an emergency decision for temporary, interim relief under this article if the agency has adopted a regulation that provides that the agency may use the procedure provided in this article.

(b) The regulation shall elaborate the application of the provisions of this article to an emergency decision by the agency, including all of the following:

(1) Define the specific circumstances in which an emergency decision may be issued under this article.

- (2) State the nature of the temporary, interim relief that the agency may order.
- (3) Prescribe the procedures that will be available before and after issuance of an emergency decision under this article. The procedures may be more protective of the person to which the agency action is directed than those provided in this article.
- (c) This article does not apply to an emergency decision, including a cease and desist order or an interim or temporary suspension order, issued pursuant to other express statutory authority.

### **Conditions for issuance of emergency decision**

11460.30. (a) An agency may only issue an emergency decision under this article in a situation involving an immediate danger to the public health, safety, or welfare that requires immediate agency action.

(b) An agency may only take action under this article that is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies issuance of an emergency decision.

(c) An emergency decision issued under this article is limited to temporary, interim relief. The temporary, interim relief is subject to judicial review under Section 11460.80, and the underlying issue giving rise to the temporary, interim relief is subject to an adjudicative proceeding pursuant to Section 11460.60.

### **Notice and hearing prior to decision**

11460.40. (a) Before issuing an emergency decision under this article, the agency shall, if practicable, give the person to which the agency action is directed notice and an opportunity to be heard.

(b) Notice and hearing under this section may be oral or written, including notice and hearing by telephone, facsimile transmission, or other electronic means, as the circumstances permit. The hearing may be conducted in the same manner as an informal hearing.

### **Statement of factual and legal basis and reasons for emergency decision**

11460.50. (a) The agency shall issue an emergency decision, including a brief explanation of the factual and legal basis and reasons for the emergency decision, to justify the determination of an immediate danger and the agency's emergency decision to take the specific action.

(b) The agency shall give notice to the extent practicable to the person to which the agency action is directed. The emergency decision is effective when issued or as provided in the decision.

### **Formal or informal proceeding after issuance of emergency decision**

11460.60. (a) After issuing an emergency decision under this article for temporary, interim relief, the agency shall conduct an adjudicative proceeding under a formal, informal, or other applicable hearing procedure to resolve the underlying issues giving rise to the temporary, interim relief.

(b) The agency shall commence an adjudicative proceeding under another procedure within 10 days after issuing an emergency decision under this article, notwithstanding the pendency of proceedings for judicial review of the emergency decision.

**Agency record**

11460.70. The agency record consists of any documents concerning the matter that were considered or prepared by the agency. The agency shall maintain these documents as its official record.

**Judicial review of decision**

11460.80. (a) On issuance of an emergency decision under this article, the person to which the agency action is directed may obtain judicial review of the decision in the manner provided in this section without exhaustion of administrative remedies.

(b) Judicial review under this section shall be pursuant to Section 1094.5 of the Code of Civil Procedure, subject to the following provisions:

(1) The hearing shall be on the earliest day that the business of the court will admit of, but not later than 15 days after service of the petition on the agency.

(2) Where it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(3) A party, on written request to another party, before the proceedings for review and within 10 days after issuance of the emergency decision, is entitled to appropriate discovery.

(4) The relief that may be ordered on judicial review is limited to a stay of the emergency decision.

***Article 14. Declaratory Decision*****Conduct of proceeding under declaratory decision procedure**

11465.10. Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the declaratory decision procedure provided in this article.

**Application; Issuance of decision**

11465.20. (a) A person may apply to an agency for a declaratory decision as to the applicability to specified circumstances of a statute, regulation, or decision within the primary jurisdiction of the agency.

(b) The agency in its discretion may issue a declaratory decision in response to the application. The agency shall not issue a declaratory decision if any of the following applies:

(1) Issuance of the decision would be contrary to a regulation adopted under this article.

(2) The decision would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory decision proceeding.

(3) The decision involves a matter that is the subject of pending administrative or judicial proceedings.

(c) An application for a declaratory decision is not required for exhaustion of the applicant's administrative remedies for purposes of judicial review.

**Notice of application for decision**

11465.30. Within 30 days after receipt of an application for a declaratory decision, an agency shall give notice of the application to all persons to which notice of an adjudicative proceeding is otherwise required, and may give notice to any other person.

**Applicable hearing procedure**

11465.40. The provisions of a formal, informal, or other applicable hearing procedure do not apply to an agency proceeding for a declaratory decision except to the extent provided in this article or to the extent the agency so provides by regulation or order.

**Actions of agency after receipt of application**

11465.50. (a) Within 60 days after receipt of an application for a declaratory decision, an agency shall do one of the following, in writing:

(1) Issue a decision declaring the applicability of the statute, regulation, or decision in question to the specified circumstances.

(2) Set the matter for specified proceedings.

(3) Agree to issue a declaratory decision by a specified time.

(4) Decline to issue a declaratory decision, stating in writing the reasons for its action.

Agency action under this paragraph is not subject to judicial review.

(b) A copy of the agency's action under subdivision (a) shall be served promptly on the applicant and any other party.

(c) If an agency has not taken action under subdivision (a) within 60 days after receipt of an application for a declaratory decision, the agency is considered to have declined to issue a declaratory decision on the matter.

**Contents of decision; Status and binding effect of decision**

11465.60. (a) A declaratory decision shall contain the names of all parties to the proceeding, the particular facts on which it is based, and the reasons for its conclusion.

(b) A declaratory decision has the same status and binding effect as any other decision issued by the agency in an adjudicative proceeding.

**Model regulations**

11465.70. (a) The Office of Administrative Hearings shall adopt and promulgate model regulations under this article that are consistent with the public interest and with the general policy of this article to facilitate and encourage agency issuance of reliable advice. The model regulations shall provide for all of the following:

(1) A description of the classes of circumstances in which an agency will not issue a declaratory decision.

(2) The form, contents, and filing of an application for a declaratory decision.

(3) The procedural rights of a person in relation to an application.

(4) The disposition of an application.

(b) The regulations adopted by the Office of Administrative Hearings under this article apply in an adjudicative proceeding unless an agency adopts its own regulations to govern declaratory decisions of the agency.

(c) This article does not apply in an adjudicative proceeding to the extent an agency by regulation provides inconsistent rules or provides that this article is not applicable in a proceeding of the agency.

## ***Article 15. Conversion of Proceeding***

### **Conversion into another type of proceeding**

11470.10. (a) Subject to any applicable regulation adopted under Section 11470.50, at any point in an agency proceeding the presiding officer or other agency official responsible for the proceeding:

(1) May convert the proceeding to another type of agency proceeding provided for by statute if the conversion is appropriate, is in the public interest, and does not substantially prejudice the rights of a party.

(2) Shall convert the proceeding to another type of agency proceeding provided for by statute, if required by regulation or statute.

(b) A proceeding of one type may be converted to a proceeding of another type only on notice to all parties to the original proceeding.

### **Appointment of successor to preside over new proceeding**

11470.20. If the presiding officer or other agency official responsible for the original proceeding would not have authority over the new proceeding to which it is to be converted, the agency head shall appoint a successor to preside over or be responsible for the new proceeding.

### **Record of original proceeding**

11470.30. To the extent practicable and consistent with the rights of parties and the requirements of this article relating to the new proceeding, the record of the original agency proceeding shall be used in the new agency proceeding.

### **Duties of presiding officer of new proceeding**

11470.40. After a proceeding is converted from one type to another, the presiding officer or other agency official responsible for the new proceeding shall do all of the following:

(a) Give additional notice to parties or other persons necessary to satisfy the statutory requirements relating to the new proceeding.

(b) Dispose of the matters involved without further proceedings if sufficient proceedings have already been held to satisfy the statutory requirements relating to the new proceeding.

(c) Conduct or cause to be conducted any additional proceedings necessary to satisfy the statutory requirements relating to the new proceeding, and allow the parties a reasonable time to prepare for the new proceeding.

### **Adoption of regulations to govern conversion**

11470.50. An agency may adopt regulations to govern the conversion of one type of proceeding to another. The regulations may include an enumeration of the factors to be considered in determining whether and under what circumstances one type of proceeding will be converted to another.

## ***Article 16. Administrative Adjudication Code of Ethics***

### **Name of rules**

11475. The rules imposed by this article may be referred to as the Administrative Adjudication Code of Ethics.

## **Application**

11475.10. (a) This article applies to the following persons:

(1) An administrative law judge. As used in this subdivision, “administrative law judge” means an incumbent of that position, as defined by the State Personnel Board, for each class specification for Administrative Law Judge.

(2) A presiding officer to which this article is made applicable by statute or regulation.

(b) This article shall apply notwithstanding any general statutory provision that this chapter does not apply to some or all of a state agency’s adjudicative proceedings.

## **Law governing conduct**

11475.20. Except as otherwise provided in this article, the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges governs the hearing and nonhearing conduct of an administrative law judge or other presiding officer to which this article applies.

## **Definitions**

11475.30. For the purpose of this article, the following terms used in the Code of Judicial Ethics have the meanings provided in this section:

(a) “Appeal” means administrative review.

(b) “Court” means the agency conducting an adjudicative proceeding.

(c) “Judge” means administrative law judge or other presiding officer to which this article applies. Related terms, including “judicial,” “judiciary,” and “justice,” mean comparable concepts in administrative adjudication.

(d) “Law” includes regulation and precedent decision.

## **Inapplicable provisions of Code of Judicial Ethics**

11475.40. The following provisions of the Code of Judicial Ethics do not apply under this article:

(a) Canon 3B(7), to the extent it relates to ex parte communications.

(b) Canon 3B(10).

(c) Canon 3D(3).

(d) Canon 4C.

(e) Canon 4E(1), 4F, and 4G.

(f) Canons 5A - 5D. However, the introductory paragraph of Canon 5 applies to persons subject to this article notwithstanding Chapter 9.5 (commencing with Section 3201) of Division 4 of Title 1, relating to political activities of public employees.

(g) Canon 6.

## **Violations**

11475.50. A violation of an applicable provision of the Code of Judicial Ethics, or a violation of the restrictions and prohibitions on accepting honoraria, gifts, or travel that otherwise apply to elected state officers pursuant to Chapter 9.5 (commencing with Section 89500) of Title 9, by an administrative law judge or other presiding officer to which this article applies is cause for discipline by the employing agency pursuant to Section 19572.

### **Compliance requirements**

11475.60. Except as provided in subdivision (b), a person to whom this article applies shall comply immediately with all applicable provisions of the Code of Judicial Ethics.

(b) A person to whom this article applies shall comply with Canon 4D(2) of the Code of Judicial Ethics as soon as reasonably possible and shall do so in any event within a period of one year after the article becomes applicable.

### **Construction and intent**

11475.70. Nothing in this article shall be construed or is intended to limit or affect the rights of an administrative law judge or other presiding officer under Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1.

## **CHAPTER 5. ADMINISTRATIVE ADJUDICATION: FORMAL HEARING**

### **Definitions**

11500. In this chapter unless the context or subject matter otherwise requires:

(a) “Agency” includes the state boards, commissions, and officers to which this chapter is made applicable by law, except that wherever the word “agency” alone is used the power to act may be delegated by the agency, and wherever the words “agency itself” are used the power to act shall not be delegated unless the statutes relating to the particular agency authorize the delegation of the agency’s power to hear and decide.

(b) “Party” includes the agency, the respondent, and any person, other than an officer or an employee of the agency in his or her official capacity, who has been allowed to appear or participate in the proceeding.

(c) “Respondent” means any person against whom an accusation is filed pursuant to Section 11503 or against whom a statement of issues is filed pursuant to Section 11504.

(d) “Administrative law judge” means an individual qualified under Section 11502.

(e) “Agency member” means any person who is a member of any agency to which this chapter is applicable and includes any person who himself or herself constitutes an agency.

### **Application of chapter to agency**

11501. (a) This chapter applies to any agency as determined by the statutes relating to that agency.

(b) This chapter applies to an adjudicative proceeding of an agency created on or after July 1, 1997, unless the statutes relating to the proceeding provide otherwise.

(c) Chapter 4.5 (commencing with Section 11400) applies to an adjudicative proceeding required to be conducted under this chapter, unless the statutes relating to the proceeding provide otherwise.

### **Administrative law judges**

11502. (a) All hearings of state agencies required to be conducted under this chapter shall be conducted by administrative law judges on the staff of the Office of Administrative Hearings. This subdivision applies to a hearing required to be conducted under this chapter that is conducted under the informal hearing or emergency decision procedure provided in Chapter 4.5 (commencing with Section 11400).

(b) The Director of the Office of Administrative Hearings has power to appoint a staff of administrative law judges for the office as provided in Section 11370.3. Each administrative law judge shall have been admitted to practice law in this state for at least five years immediately preceding his or her appointment and shall possess any additional qualifications established by the State Personnel Board for the particular class of position involved.

### **Accusation**

11503. A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

### **Statement of issues**

11504. A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought. The statement of issues shall be verified unless made by a public officer acting in his or her official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief. The statement of issues shall be served in the same manner as an accusation, except that, if the hearing is held at the request of the respondent, Sections 11505 and 11506 shall not apply and the statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in Section 11509. Unless a statement to respondent is served pursuant to Section 11505, a copy of Sections 11507.5, 11507.6, and 11507.7, and the name and address of the person to whom requests permitted by Section 11505 may be made, shall be served with the statement of issues.

### **Applicability of references to accusations to statements of issues**

11504.5. In the following sections of this chapter, all references to accusations shall be deemed to be applicable to statements of issues except in those cases mentioned in subdivision (a) of Section 11505 and Section 11506 where compliance is not required.

### **Service of accusation and accompanying papers; Notice of defense; Request for hearing**

11505. (a) Upon the filing of the accusation the agency shall serve a copy thereof on the respondent as provided in subdivision (c). The agency may include with the accusation any information which it deems appropriate, but it shall include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506. The copy of the accusation shall include or be accompanied by (1) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506



within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (2) copies of Sections 11507.5, 11507.6, and 11507.7.

(b) The statement to respondent shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, (here insert name of agency) may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to: (here insert name and address of agency). You may, but need not, be represented by counsel at any or all stages of these proceedings.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.6 of the Government Code in the possession, custody or control of the agency, you may contact: (here insert name and address of appropriate person). The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the agency or, if an administrative law judge has been assigned to the hearing, the Office of Administrative Hearings, within 10 working days after you discover the good cause. Failure to give notice within 10 days will deprive you of a postponement.

(c) The accusation and all accompanying information may be sent to the respondent by any means selected by the agency. But no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent shall have been served personally or by registered mail as provided herein, or shall have filed a notice of defense or otherwise appeared. Service may be proved in the manner authorized in civil actions. Service by registered mail shall be effective if a statute or agency rule requires the respondent to file the respondent's address with the agency and to notify the agency of any change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to the respondent at the latest address on file with the agency.

### **Filing of notice of defense; Contents; Right to hearing on the merits**

11506. (a) Within 15 days after service of the accusation the respondent may file with the agency a notice of defense in which the respondent may:

- (1) Request a hearing.
- (2) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed.
- (3) Object to the form of the accusation on the ground that it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense.
- (4) Admit the accusation in whole or in part.
- (5) Present new matter by way of defense.
- (6) Object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.

(b) Within the time specified respondent may file one or more notices of defense upon any or all of these grounds but all of these notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a

notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation shall be deemed waived.

(d) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state the respondent's mailing address. It need not be verified or follow any particular form.

(e) As used in this section, "file," "files," "filed," or "filing" means "delivered or mailed" to the agency as provided in Section 11505.

### **Amended or supplemental accusation; Objections**

11507. At any time before the matter is submitted for decision the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified thereof. If the amended or supplemental accusation presents new charges the agency shall afford respondent a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

### **Consolidated proceedings; Separate hearings**

11507.3. (a) When proceedings that involve a common question of law or fact are pending, the administrative law judge on the judge's own motion or on motion of a party may order a joint hearing of any or all the matters at issue in the proceedings. The administrative law judge may order all the proceedings consolidated and may make orders concerning the procedure that may tend to avoid unnecessary costs or delay.

(b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

### **Exclusivity of discovery provisions**

11507.5. The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

### **Request for discovery**

11507.6. After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to

another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

### **Motion to compel discovery; Order**

11507.7. (a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera,

the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

### **Time and place of hearing**

11508. (a) The agency shall consult the office, and subject to the availability of its staff, shall determine the time and place of hearing. The hearing shall be held in Oakland if the transaction occurred or the respondent resides within the First or Sixth Appellate District, in the County of Los Angeles if the transaction occurred or the respondent resides within the Second or Fourth Appellate District other than the County of Imperial or San Diego, in the County of Sacramento if the transaction occurred or the respondent resides within the Third or Fifth Appellate District, and in the County of San Diego if the transaction occurred or the respondent resides within the Fourth Appellate District in the County of Imperial or San Diego.

(b) Notwithstanding subdivision (a):

(1) If the transaction occurred in a district other than that of respondent's residence, the agency may select the county appropriate for either district.

(2) The agency may select a different place nearer the place where the transaction occurred or the respondent resides.

(3) The parties by agreement may select any place within the state.

(c) The respondent may move for, and the administrative law judge has discretion to grant or deny, a change in the place of the hearing. A motion for a change in the place of the hearing shall be made within 10 days after service of the notice of hearing on the respondent.

### **Notice of hearing**

11509. The agency shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense.

The notice to respondent shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before (here insert name of agency) at (here insert place of hearing) on the \_\_\_\_ day of \_\_\_\_, 19\_\_, at the hour of \_\_\_\_, upon the charges made in the accusation served upon you. If you object to the place of hearing, you must notify the presiding officer within 10 days after this notice is served on you. Failure to notify the presiding officer within 10 days will deprive you of a change in the place of the hearing. You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to (here insert appropriate

office of agency).

### **Depositions**

11511. On verified petition of any party, an administrative law judge or, if an administrative law judge has not been appointed, an agency may order that the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed by law for depositions in civil actions under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of the testimony; a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. The petitioner shall serve notice of hearing and a copy of the petition on the other parties at least 10 days before the hearing. Where the witness resides outside the state and where the administrative law judge or agency has ordered the taking of the testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition therefor in the superior court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189.

### **Prehearing conference; Conduct by telephone or other electronic means; Conversion to ADR or informal hearing; Prehearing order**

11511.5. (a) On motion of a party or by order of an administrative law judge, the administrative law judge may conduct a prehearing conference. The administrative law judge shall set the time and place for the prehearing conference, and shall give reasonable written notice to all parties.

(b) The prehearing conference may deal with one or more of the following matters:

- (1) Exploration of settlement possibilities.
  - (2) Preparation of stipulations.
  - (3) Clarification of issues.
  - (4) Rulings on identity and limitation of the number of witnesses.
  - (5) Objections to proffers of evidence.
  - (6) Order of presentation of evidence and cross-examination.
  - (7) Rulings regarding issuance of subpoenas and protective orders.
  - (8) Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing.
  - (9) Exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing.
  - (10) Motions for intervention.
  - (11) Exploration of the possibility of using alternative dispute resolution provided in Article 5 (commencing with Section 11420.10) of, or the informal hearing procedure provided in Article 10 (commencing with Section 11445.10) of, Chapter 4.5, and objections to use of the informal hearing procedure. Use of alternative dispute resolution or of the informal hearing procedure is subject to subdivision (d).
  - (12) Any other matters as shall promote the orderly and prompt conduct of the hearing.
- (c) The administrative law judge may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.
- (d) With the consent of the parties, the prehearing conference may be converted

immediately into alternative dispute resolution or an informal hearing. With the consent of the parties, the proceeding may be converted into alternative dispute resolution to be conducted at another time. With the consent of the agency, the proceeding may be converted into an informal hearing to be conducted at another time subject to the right of a party to object to use of the informal hearing procedure as provided in Section 11445.30.

(e) The administrative law judge shall issue a prehearing order incorporating the matters determined at the prehearing conference. The administrative law judge may direct one or more of the parties to prepare a prehearing order.

### **Settlement conference**

11511.7. (a) The administrative law judge may order the parties to attend and participate in a settlement conference. The administrative law judge shall set the time and place for the settlement conference, and shall give reasonable written notice to all parties.

(b) The administrative law judge at the settlement conference shall not preside as administrative law judge at the hearing unless otherwise stipulated by the parties. The administrative law judge may conduct all or part of the settlement conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in and to hear the entire proceeding while it is taking place.

### **Administrative law judge to preside over hearing; Disqualification; Reporting of proceedings**

11512. (a) Every hearing in a contested case shall be presided over by an administrative law judge. The agency itself shall determine whether the administrative law judge is to hear the case alone or whether the agency itself is to hear the case with the administrative law judge.

(b) When the agency itself hears the case, the administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the administrative law judge alone hears a case, he or she shall exercise all powers relating to the conduct of the hearing. A ruling of the administrative law judge admitting or excluding evidence is subject to review in the same manner and to the same extent as the administrative law judge's proposed decision in the proceeding.

(c) An administrative law judge or agency member shall voluntarily disqualify himself or herself and withdraw from any case in which there are grounds for disqualification, including disqualification under Section 11425.40. The parties may waive the disqualification by a writing that recites the grounds for disqualification. A waiver is effective only when signed by all parties, accepted by the administrative law judge or agency member, and included in the record. Any party may request the disqualification of any administrative law judge or agency member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that the administrative law judge or agency member is disqualified. Where the request concerns an agency member, the issue shall be determined by the other members of the agency. Where the request concerns the administrative law judge, the issue shall be determined by the agency itself if the agency itself hears the case with the administrative law judge, otherwise the issue shall be determined by the administrative law judge. No agency member shall withdraw voluntarily or be subject to disqualification if his or her disqualification would prevent the existence of a quorum qualified to act in the particular case, except that a

substitute qualified to act may be appointed by the appointing authority.

(d) The proceedings at the hearing shall be reported by a stenographic reporter. However, upon the consent of all the parties, the proceedings may be reported electronically.

(e) Whenever, after the agency itself has commenced to hear the case with an administrative law judge presiding, a quorum no longer exists, the administrative law judge who is presiding shall complete the hearing as if sitting alone and shall render a proposed decision in accordance with subdivision (b) of Section 11517.

## **Evidence**

11513. (a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

(e) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

(f) The presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

## **Affidavits**

11514. (a) At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in subdivision (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefor is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subdivision (a) shall be substantially in the following form:

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (here insert name of proponent or his attorney) at (here insert address) that you wish to cross-examine

him. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert a date seven days after the date of mailing or delivering the affidavit to the opposing party).

### **Official notice**

11515. In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the matter of such refutation to be determined by the agency.

### **Amendment of accusation after submission**

11516. The agency may order amendment of the accusation after submission of the case for decision. Each party shall be given notice of the intended amendment and opportunity to show that he will be prejudiced thereby unless the case is reopened to permit the introduction of additional evidence in his behalf. If such prejudice is shown the agency shall reopen the case to permit the introduction of additional evidence.

### **Contested cases**

11517. (a) A contested case may be originally heard by the agency itself and subdivision (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge may originally hear the case alone and subdivision (c) shall apply.

(b) If a contested case is originally heard before an agency itself, all of the following provisions apply:

(1) An administrative law judge shall be present during the consideration of the case and, if requested, shall assist and advise the agency in the conduct of the hearing.

(2) No member of the agency who did not hear the evidence shall vote on the decision.

(3) The agency shall issue its decision within 100 days of submission of the case.

(c)(1) If a contested case is originally heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after the receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of the proposed decision by the agency.

(2) Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the agency. The agency may do any of the following:

(A) Adopt the proposed decision in its entirety.

(B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the



proposed decision.

(C) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

(D) Reject the proposed decision and refer the case to that same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence. If the case is referred to an administrative law judge pursuant to this subparagraph, he or she shall prepare a revised proposed decision, as provided in paragraph (1), based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision shall be furnished to each party and his or her attorney as prescribed in this subdivision.

(E) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript. If the agency acts pursuant to this subparagraph, all of the following provisions apply:

(i) A copy of the record shall be made available to the parties. The agency may require payment of fees covering direct costs of making the copy.

(ii) The agency itself shall not decide any case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.

(iii) The authority of the agency itself to decide the case under this subdivision includes the authority to decide some but not all issues in the case.

(iv) If the agency elects to proceed under this subparagraph, the agency shall issue its final decision not later than 100 days after the rejection of the proposed decision. If the agency elects to proceed under this subparagraph, and has ordered a transcript of the proceedings before the administrative law judge, the agency shall issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that a further delay is required by special circumstance, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order shall be subject to judicial review pursuant to Section 11523.

(d) The decision of the agency shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

### **Copies of decision to parties**

11518. Copies of the decision shall be delivered to the parties personally or sent to them by registered mail.

### **Application to correct mistake or error in decision; Modification; Service of correction**

11518.5. (a) Within 15 days after service of a copy of the decision on a party, but not later than the effective date of the decision, the party may apply to the agency for correction of a mistake or clerical error in the decision, stating the specific ground on which the application is made. Notice of the application shall be given to the other parties to the proceeding. The application is not a prerequisite for seeking judicial review.

(b) The agency may refer the application to the administrative law judge who formulated

the proposed decision or may delegate its authority under this section to one or more persons.

(c) The agency may deny the application, grant the application and modify the decision, or grant the application and set the matter for further proceedings. The application is considered denied if the agency does not dispose of it within 15 days after it is made or a longer time that the agency provides by regulation.

(d) Nothing in this section precludes the agency, on its own motion or on motion of the administrative law judge, from modifying the decision to correct a mistake or clerical error. A modification under this subdivision shall be made within 15 days after issuance of the decision.

(e) The agency shall, within 15 days after correction of a mistake or clerical error in the decision, serve a copy of the correction on each party on which a copy of the decision was previously served.

**Effective date of decision; Stay of execution; Notice of suspension or revocation; Restitution; Actual knowledge as condition of enforcement**

11519. (a) The decision shall become effective 30 days after it is delivered or mailed to respondent unless: a reconsideration is ordered within that time, or the agency itself orders that the decision shall become effective sooner, or a stay of execution is granted.

(b) A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.

(c) If respondent was required to register with any public officer, a notification of any suspension or revocation shall be sent to the officer after the decision has become effective.

(d) As used in subdivision (b), specified terms of probation may include an order of restitution. Where restitution is ordered and paid pursuant to the provisions of this subdivision, the amount paid shall be credited to any subsequent judgment in a civil action.

(e) The person to which the agency action is directed may not be required to comply with a decision unless the person has been served with the decision in the manner provided in Section 11505 or has actual knowledge of the decision.

(f) A nonparty may not be required to comply with a decision unless the agency has made the decision available for public inspection and copying or the nonparty has actual knowledge of the decision.

(g) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with Article 13 (commencing with Section 11460.10) of Chapter 4.5.

**Defaults and uncontested cases**

11520. (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the agency action sought, the agency may act without taking evidence.

(b) Notwithstanding the default of the respondent, the agency or the administrative law judge, before a proposed decision is issued, has discretion to grant a hearing on reasonable notice to the parties. If the agency and administrative law judge make conflicting orders under this

subdivision, the agency's order takes precedence. The administrative law judge may order the respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.

(c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:

- (1) Failure of the person to receive notice served pursuant to Section 11505.
- (2) Mistake, inadvertence, surprise, or excusable neglect.

### **Reconsideration**

11521. (a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

### **Reinstatement of license or reduction of penalty**

11522. A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

### **Judicial review**

11523. Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. On request of the petitioner

for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to petitioner, within 30 days after the request, which time shall be extended for good cause shown, upon the payment of the fee specified in Section 69950 for the transcript, the cost of preparation of other portions of the record and for certification thereof. Thereafter, the remaining balance of any costs or charges for the preparation of the record shall be assessed against the petitioner whenever the agency prevails on judicial review following trial of the cause. These costs or charges constitute a debt of the petitioner which is collectible by the agency in the same manner as in the case of an obligation under a contract, and no license shall be renewed or reinstated where the petitioner has failed to pay all of these costs or charges. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. In the event that the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.

### **Continuances; Requirement of good cause; Judicial review of denial**

11524. (a) The agency may grant continuances. When an administrative law judge of the Office of Administrative Hearings has been assigned to the hearing, no continuance may be granted except by him or her or by the presiding judge of the appropriate regional office of the Office of Administrative Hearings, for good cause shown.

(b) When seeking a continuance, a party shall apply for the continuance within 10 working days following the time the party discovered or reasonably should have discovered the event or occurrence which establishes the good cause for the continuance. A continuance may be granted for good cause after the 10 working days have lapsed if the party seeking the continuance is not responsible for and has made a good faith effort to prevent the condition or event establishing the good cause.

(c) In the event that an application for a continuance by a party is denied by an administrative law judge of the Office of Administrative Hearings, and the party seeks judicial review thereof, the party shall, within 10 working days of the denial, make application for appropriate judicial relief in the superior court or be barred from judicial review thereof as a matter of jurisdiction. A party applying for judicial relief from the denial shall give notice to the agency and other parties. Notwithstanding Section 1010 of the Code of Civil Procedure, the notice may be either oral at the time of the denial of application for a continuance or written at the same time application is made in court for judicial relief. This subdivision does not apply to the Department of Alcoholic Beverage Control.

### **Voting by mail**

11526. The members of an agency qualified to vote on any question may vote by mail or another appropriate method.

### **Charge against funds of agency**

11527. Any sums authorized to be expended under this chapter by any agency shall be a legal charge against the funds of the agency.

### **Oaths**

11528. In any proceedings under this chapter any agency, agency member, secretary of an agency, hearing reporter, or administrative law judge has power to administer oaths and affirmations and to certify to official acts.

### **Interim orders**

11529. (a) The administrative law judge of the Medical Quality Hearing Panel established pursuant to Section 11371 may issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare.

(b) All orders authorized by this section shall be issued only after a hearing conducted pursuant to subdivision (d), unless it appears from the facts shown by affidavit that serious injury would result to the public before the matter can be heard on notice. Except as provided in subdivision (c), the licensee shall receive at least 15 days' prior notice of the hearing, which notice shall include affidavits and all other information in support of the order.

(c) If an interim order is issued without notice, the administrative law judge who issued the order without notice shall cause the licensee to be notified of the order, including affidavits and all other information in support of the order by a 24-hour delivery service. That notice shall also include the date of the hearing on the order, which shall be conducted in accordance with the requirement of subdivision (d), not later than 20 days from the date of issuance. The order shall be dissolved unless the requirements of subdivision (a) are satisfied.

(d) For the purposes of the hearing conducted pursuant to this section, the licentiate shall, at a minimum, have the following rights:

- (1) To be represented by counsel.
- (2) To have a record made of the proceedings, copies of which may be obtained by the licentiate upon payment of any reasonable charges associated with the record.
- (3) To present written evidence in the form of relevant declarations, affidavits, and documents.

The discretion of the administrative law judge to permit testimony at the hearing conducted pursuant to this section shall be identical to the discretion of a superior court judge to permit testimony at a hearing conducted pursuant to Section 527 of the Code of Civil Procedure.

- (4) To present oral argument.

(e) Consistent with the burden and standards of proof applicable to a preliminary injunction entered under Section 527 of the Code of Civil Procedure, the administrative law judge shall grant the interim order where, in the exercise of discretion, the administrative law judge concludes that:

- (1) There is a reasonable probability that the petitioner will prevail in the underlying

action.

(2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.

(f) In all cases where an interim order is issued, and an accusation is not filed and served pursuant to Sections 11503 and 11505 within 15 days of the date in which the parties to the hearing on the interim order have submitted the matter, the order shall be dissolved.

Upon service of the accusation the licensee shall have, in addition to the rights granted by this section, all of the rights and privileges available as specified in this chapter. If the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request, unless the licensee stipulates to a later hearing, and a decision within 15 days of the date the decision is received from the administrative law judge, or the board shall nullify the interim order previously issued, unless good cause can be shown by the Division of Medical Quality for a delay.

(g) Where an interim order is issued, a written decision shall be prepared within 15 days of the hearing, by the administrative law judge, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

(h) Notwithstanding the fact that interim orders issued pursuant to this section are not issued after a hearing as otherwise required by this chapter, interim orders so issued shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure. The relief which may be ordered shall be limited to a stay of the interim order. Interim orders issued pursuant to this section are final interim orders and, if not dissolved pursuant to subdivision (c) or (f), may only be challenged administratively at the hearing on the accusation.

(i) The interim order provided for by this section shall be:

(1) In addition to, and not a limitation on, the authority to seek injunctive relief provided for in the Business and Professions Code.

(2) A limitation on the emergency decision procedure provided in Article 13 (commencing with Section 11460.10) of Chapter 4.

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